

# **EXHIBIT A**

## **PART 8 OF 12**

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Amalia Rodriguez-Mendoza  
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D-1-GN-12-003588

NO. D-1-GN-12-003588

VERSATA SOFTWARE, INC., f/k/a TRILOGY  
SOFTWARE, INC., and VERSATA  
DEVELOPMENT GROUP, INC., f/k/a  
TRILOGY DEVELOPMENT GROUP, INC.,

Plaintiffs,

v

AMERIPRISE FINANCIAL, INC.,  
AMERIPRISE FINANCIAL SERVICES, INC.,  
AMERICAN ENTERPRISE INVESTMENT  
SERVICES, INC.,

Defendants.

IN THE DISTRICT COURT

TRAVIS COUNTY, TEXAS

53<sup>rd</sup> JUDICIAL DISTRICT

**DEFENDANTS' MOTION FOR PARTIAL SUMMARY JUDGMENT**

TO THE HONORABLE COURT:

Pursuant to Texas Rule of Civil Procedure 166a(c), Defendants Ameriprise Financial, Inc., Ameriprise Financial Services, Inc., and American Enterprise Investment Services, Inc. (collectively, "Ameriprise") move for partial summary judgment declaring as a matter of law that certain software licensed to Ameriprise by Plaintiffs Versata Software, Inc. and Versata Development Group, Inc. (together, "Versata") is subject to and governed by the attached open source license, and declaring that Ameriprise is therefore entitled, pursuant to the open source license, to obtain and freely use the software source code in accordance with the terms and conditions of that open source license.

**I. SUMMARY**

Versata obtained a third party's software and incorporated that software, referred to as the Ximpleware parser, into software sold by Versata called DCM Version 3.9. The Ximpleware

software that Versata downloaded and incorporated into DCM Version 3.9 is subject to an “open source” software license that states, in part:

The licenses for most software are designed to take away your freedom to share and change it. By contrast, the GNU General Public License is intended to guarantee your freedom to share and change free software – to make sure the software is free for all users ...

To protect your rights, we need to make restrictions that forbid anyone to deny you these rights or to ask you to surrender the rights. These restrictions translate to certain responsibilities for you if you distribute copies of the software, or if you modify it ... [including:]

- to cause any works based on the Program to be licensed as a whole at no charge to third parties under the terms of the GNU GPL; and
- to provide or offer in writing to provide to recipients “the complete corresponding machine-readable source code” for any Program or work based on a Program.

By choosing to incorporate Ximpleware’s open source code into its product and distribute it as a single, integrated package, Versata subjected DCM Version 3.9 to the terms and conditions of Ximpleware’s open source license. Under the explicit, unambiguous terms of the open source license, Ameriprise is entitled to obtain the source code for DCM Version 3.9 in its entirety and to use it freely, consistent with the terms of the open source license.

## **II. FACTS**

### **A. Background on the Parties and Their Dispute**

Ameriprise is a financial planning and services company. Am. Petition ¶15. Ameriprise subsidiaries serve individual investors’ and institutions’ needs through financial planning, wealth management, retirement planning, asset management, annuities, and insurance. *Id.* Ameriprise has relationships with thousands of advisors throughout the United States.

In 1999 Ameriprise and Versata entered into a Master License Agreement (“MLA”) pursuant to which Versata granted to Ameriprise a “nonexclusive, nontransferable ... perpetual,

worldwide license” to a software product called “Distribution Channel Management” or “DCM.” Redmond Ex. A. Over succeeding years and pursuant to the MLA, Ameriprise has acquired and installed upgrades to DCM, most recently acquiring and installing DCM Version 3.9 beginning in 2011.

In this action Versata wrongly alleges that Ameriprise breached the MLA by using two contractors, Infosys Technologies, Ltd. (“Infosys”) and Tata Consultancy Services (“TCS”), to perform development and maintenance services relating to DCM in the Ameriprise computing environment. Versata threatens to terminate Ameriprise’s license to use DCM, even though it is an essential component of compensation and recordkeeping operations for all Ameriprise personnel registered to perform securities work, and even though Ameriprise was explicitly granted the right under the MLA to use contractors like Infosys and TCS. Ameriprise has filed counterclaims alleging, among other claims, claims for breach of contract and breach of the warranties contained in the MLA and applicable to DCM Version 3.9, which Versata had delivered to Ameriprise in August 2011.

**B. Open Source Software in Versata’s DCM Version 3.9**

Although Versata originally claimed that it owned all rights in DCM Version 3.9, and although it denied in multiple discovery responses that it had licensed any components of DCM from third parties, Versata has now been forced to admit that DCM contains dozens of open source software components. Redmond Ex H (deposition exhibit 34). Open source software is computer software publicly available in source code (human-readable) form that can be used without charge and for any purpose, subject to the terms and conditions of the relevant open source license. Collins Decl. ¶ 5. Virtually all open source licenses require a subsequent distributor of the open source software (like Versata) to notify the recipient (like Ameriprise) of the existence of open source software in the package delivered to the recipient. Most open

source licenses require the subsequent distributor of the software to provide or make available the source code to any recipients of the software and prohibit the distributor from imposing additional restrictions on the recipients' use of the software. A few open source licenses are "viral" licenses, in that their terms and conditions apply to any proprietary program that contains the open source software, even if other portions of the program were otherwise considered proprietary and were developed separately from the open source software with which it is integrated. *Id.*

One prominent type of open source license, the General Public License or "GPL," encompasses these viral features:

- A requirement to give the recipient notice of the existence of the GPL-licensed software in the combined work (GPL §1);
- A requirement that the entire package containing the open source software is to be licensed as a whole under the terms and conditions of the GPL (*Id.*, §§2(b), 4 and 6); and
- A requirement that the user/distributor must provide or make available to the recipient the source code for the combined package, may not restrict the customer's use of the modified open source software, and must comply with any additional terms of the open source license (*Id.*, §§3, 5 and 6).

*See Collins Ex. B.*

After Versata sued Ameriprise, claiming that DCM was entirely Versata's own proprietary and confidential software, Ameriprise learned of the extent of open source software embedded within DCM. Versata documents establish that DCM is nowhere near entirely owned by Versata, because nearly one hundred third party open source programs have been incorporated into DCM. Redmond Ex. H (deposition exhibit 34). One example of open source software in DCM, identified on an internal list of open source components, is a file called "vtd-

xml.jar,” an XML parser offered by a company called Ximpleware.<sup>1</sup> Ximpleware’s XML parser is open source software that enables DCM to read and parse XML files pulled from external sources, so that DCM can understand, manipulate, and use the contents of such files. The current DCM version installed at Ameriprise, DCM Version 3.9, incorporates the Ximpleware parser into multiple portions of DCM code. Collins Decl. ¶ 11. The Ximpleware parser is highly integrated into DCM; indeed, more than half of the hundreds of component files of DCM that appear to originate with Versata depend directly or indirectly on the Ximpleware parser. *Id.*

Ximpleware is an open source program readily downloadable from the Internet. Its use is conditioned upon and governed by an open source license, specifically Version 2 of the GNU GPL. Collins Decl. ¶¶ 8-9 and Ex. B. The GPL is an open source software license written and promulgated by the Free Software Foundation principally to ensure two things: that parties cannot misappropriate the work product of open source software developers for commercial gain without severe consequences; and to ensure that all recipients of GPL-licensed software continue to have access to at least its source code, and remain free to use and modify the source code for their own purposes without restriction. The GPL states:

The licenses for most software are designed to take away your freedom to share and change it. By contrast, the GNU General Public License is intended to guarantee your freedom to share and change free software – to make sure the software is free for all users ...

Our General Public Licenses are designed to make sure that you have the freedom to distribute copies of free software ..., that you receive source code or can get it

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<sup>1</sup> “XML” refers to “eXtensible Markup Language,” a language for communicating structured data in a format that is both human-readable and machine-readable. An XML “parser” is a decoder that converts the human readable textual form of code into a binary data structure, commonly in the form of a tree. Ximpleware’s parser is open source software that enables a program to read and parse XML files pulled from external sources, so that the program can understand and manipulate the contents of such files. Parsers are critical to making large enterprise software programs work, because they provide for a universal exchange language that ties together various pieces of a large, complex system. Collins Decl. ¶ 7.

if you want it, that you can change the software or use pieces of it in new free programs; and that you know you can do these things.

To protect your rights, we need to make restrictions that forbid anyone to deny you these rights or to ask you to surrender the rights. These restrictions translate to certain responsibilities for you if you distribute copies of the software, or if you modify it.

Collins Ex. B, Preamble. Among the obligations that Versata accepted to be able to incorporate the Ximpleware parser into DCM were the following obligations:

- to “conspicuously and appropriately publish on each copy an appropriate copyright notice and disclaimer of warranty;”
- to “give any other recipients of the Program a copy of [the GPL] along with the Program”;
- to cause any works based on the Program to be licensed as a whole at no charge to third parties under the terms of the GPL; and
- to provide or offer in writing to provide to recipients “the complete corresponding machine-readable source code.”

Collins Ex. B §§ 1, 2, 3. When Versata delivered DCM Version 3.9 to Ameriprise, it violated each of these obligations.<sup>2</sup>

**C. Versata’s Discovery Responses Confirm That It Lacks Any License from Ximpleware Other Than the GPL**

Early in this case, Ameriprise served interrogatories and document requests, and notified Versata of its intent to take a corporate deposition. Redmond Decl. ¶ 3. Among its requests, Ameriprise asked Versata:

- To “[i]dentify all third-party licensors of any components of DCM.” (Interrogatory 7);
- To produce “[a]ll licenses covering or relating to DCM code or components of DCM code effective at any time after October 1999.” (Document Request 13);

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<sup>2</sup> Versata’s failure to comply with the GPL when it delivered DCM Version 3.9 also breached its MLA warranty that, among other things, “Licensor has the right to furnish the Products, Documentation, and other materials ... free of all liens, claims, encumbrances and other restrictions...” Redmond Ex. A § 8.1.

and

- To make available a Versata representative to testify regarding “[a]ll licenses covering, or relating to, DCM code or components of DCM code” (Deposition Topic 2) and regarding “[t]he genesis of the code included in DCM” (Topic 3).

Redmond Exs. B, C, D.

In its responses to those discovery requests, Versata initially objected and refused to provide responsive information or documents. Redmond Exs. C, D. Versata also refused to supply the corporate representative whose testimony Ameriprise had first requested on January 30, 2013. Redmond Decl. ¶ 6. Ameriprise moved to compel responses, and on May 8, 2013, the Court overruled Versata’s objections and ordered Versata to identify its third-party licensors of components of DCM (Interrogatory 7), to produce all licenses from such licensors (Document Request 13), and to designate witnesses to testify on the topics in Ameriprise’s notice. Redmond Ex. E. Although the Court’s Order required Versata’s compliance within three days, the parties agreed that Versata could have two weeks – until May 22, 2013 – to respond and produce documents. Redmond Decl. ¶ 7.

In its May 22 responses, Versata identified no open source licensors. Instead, Versata represented that the *only* licensor of any component of DCM was Versata’s Dubai-based affiliate G-Dev FZ-LLC:

Interrogatory No. 7: Identify all third-party licensors of any components of DCM.

Response: G-Dev FZ-LLC has performed development services for Versata Software related to DCM. However, as described in that agreement Versata Software retains legal title to most of the work done by G-Dev. However, in some instances as described in section 7.2 of that agreement G-Dev may retain ownership and license products to Versata.

Redmond Ex. F. Consistent with its interrogatory response, Versata’s May 22 production of more than 175,000 documents contained only *one* license agreement – the agreement between Versata and G-Dev. Redmond Decl. ¶ 8. On the morning of June 14, 2013, immediately before



the court-ordered deposition of Versata's corporate representative, Versata produced two additional agreements with companies Versata has used for development services – Accolite, Inc. and oDesk. Redmond Ex. H at 46-52. Versata's representative, designated to testify on behalf of the company as to "all licenses covering, or relating to, DCM code or components of DCM," could not identify any other third party hired to provide development work in connection with DCM and could not identify any additional contracts or agreements with such developers or any other contributor. Redmond Ex. H at 55-57. Although he identified several examples of third party software included in DCM, Versata's corporate representative claimed to be unfamiliar with Ximpleware:

Q: Are you aware of there being XimpleWare code within DCM?

A: Could you repeat that term?

Q: XimpleWare, like Simpleware except the first letter is X.

A: I'm not aware of that particular name.

Redmond Ex. H at 88-90.

More than two months after the Court ordered Versata to identify all of its licensors, and to produce all of its license agreements with such licensors within three days, Versata still has not produced any evidence that it has a license agreement with Ximpleware other than the GPL attached as Exhibit B to the Collins Declaration. Redmond Decl. ¶ 10.

### III. ARGUMENT

#### A. Summary Judgment Standard

Under Rule 166a(c), summary judgment is proper when the movant establishes that there is no genuine issue of material fact and that it is entitled to judgment as a matter of law. *Fort Worth Osteopathic Hosp. v. Reese*, 148 S.W.3d 94, 99 (Tex. 2004). After the movant produces evidence entitling it to summary judgment, the burden shifts to the non-movant to present

evidence creating a fact issue. *Walker v. Harris*, 924 S.W.2d 375, 377 (Tex. 1996). An issue is conclusively established, and will support entry of summary judgment, when the evidence is such that there is no room for ordinary minds to differ as to the conclusion to be drawn. *Triton Oil & Gas Corp. v. Marine Contractors and Supply, Inc.*, 644 S.W.2d 443, 445 (Tex. 1982); *Rakowski v. Committee to Protect Clear Creek Village Homeowner's Rights and Preserve Our Park*, 252 S.W.3d 673, 675-76 (Tex. App.—Houston [14<sup>th</sup> Dist.] 2008, pet. denied).

Versata now admits that DCM Version 3.9 incorporates a variety of open source software, including the file containing the Ximpleware parser. In fact, Versata even concedes that its DCM Version 3.9 is inextricably linked with the Ximpleware parser. Despite an interrogatory, a document request, and a corporate deposition requesting that Versata identify, produce, and testify regarding its third party licenses, and despite a Court order compelling Versata to do so, Versata has provided no evidence that its use of the open source Ximpleware parser was subject to any license other than the GPL. As a matter of law, the GPL governs Versata's distribution of DCM Version 3.9, and Ameriprise is entitled to obtain the source code for DCM Version 3.9 from Versata without constraints other than the restrictions of the GPL.

**B. Use of Ximpleware's Open Source Software is Governed by the GPL**

Ximpleware's XML parser is a third party, open source software program readily downloadable from the Internet. Its use is conditioned upon and governed by the GPL. *See* Collins Decl. ¶ 8 and Ex. B § 0. The GPL is an enforceable contract. The United States Court of Appeals for the Federal Circuit has determined that open source licenses are enforceable not only under contract law, but also under copyright law. "Copyright holders who engage in open source licensing have the right to control the modification and distribution of copyrighted material." *Jacobsen v. Katzer*, 535 F.3d 1373, 1381 (Fed. Cir. 2008). Thus, the developers of open source software obtain copyright protection in their software code, and they offer the GPL as a license

to third parties allowing them to copy, distribute, and modify the software *so long as* the third parties agree to the license terms in the relevant open source license. *See* Collins Ex. B, Preamble.

Any third party who chooses to copy, distribute, or modify software to which the GPL applies is bound by the terms and conditions of the GPL. The GPL makes this consequence abundantly clear:

You are not required to accept this License, since you have not signed it. However, nothing else grants you permission to modify or distribute the Program or its derivative works. These actions are prohibited by law if you do not accept this License. Therefore, by modifying or distributing the Program (or any work based on the Program), you indicate your acceptance of this License to do so, and all its terms and conditions for copying, distributing or modifying the Program or works based on it.

Collins Ex. B § 5. *See also id.*, Preamble (“These restrictions translate to certain responsibilities for you if you distribute copies of the software, or if you modify it.”); *id.*, Preamble (“The precise terms and conditions for copying, distribution and modification follow.”). Courts have recognized this consequence of the use of open source software governed by the GPL:

One publicly available program used ... was ... [specified] open source code ... . Any user of that code is, however, bound by the terms of the GNU General Public License (GPL). The GPL puts restrictions on the modification and subsequent distribution of freeware programs. Essentially, once the programs are freely released into the public domain, the creators intend for them to stay free.

*Computer Assocs. Int’l v. Quest Software, Inc.*, 333 F. Supp. 2d 688, 697-98 (N.D. Ill. 2004)

Thus, when Versata copied, modified, and distributed the Ximpleware parser as part of DCM Version 3.9, it did so pursuant to the terms and conditions of the GPL and not the MLA.

**C. Versata’s DCM Version 3.9 is a “Work Based On The Program” Under the GPL, and Ameriprise is therefore Entitled to a Declaration that DCM Version 3.9 is Governed by the GPL**

The GPL applies to copying, modification, and distribution of the “Program” (here, the Ximpleware software) and also to copying, modification, and distribution of any “work based on

the Program.” Collins Ex. B § 0. Under the GPL, a work is “based on the Program” if it “contains the Program or a portion of it, either verbatim or with modifications.” Collins Ex. B § 0. The requirements of the GPL “apply to the modified work as a whole.” *Id.* § 2. It is undisputed that DCM Version 3.9 incorporates the Ximpleware parser and is therefore a “work based on the Program” under the GPL. *See* Redmond Ex. H (deposition ex. 34); Collins Decl. ¶ 11.

DCM is a single integrated product, provided to the customer on a disk or downloaded by the customer from an online secure system. Redmond Ex. H at 119. DCM Version 3.9 incorporates Ximpleware into multiple portions of DCM code. Versata’s corporate representative testified that DCM is a single, integrated whole, all of whose files are interrelated:

Q: But you can’t just pluck [open source code] out of DCM?

A: It’s a very complex product. Plucking it out would be a ... would be a loose term to use. But it’s not that easy. It’s a very complex product.

Q: And is it complicated just because of all the connections between this code and other code within DCM?

A: Yes, because all these functions have interdependencies. They all work to serve a purpose. ....

Q: Could you identify any particular open source code that would be easier to pull out than others or are they all integrated?

A: I think they’re all integrated.

Redmond Ex. H at 113-114; *see also id.* at 113 (open source is “an integral part and the code is well merged”); *id.* at 118 (“It is integrated software, yes.”). The integration of Ximpleware’s parser into DCM is further illustrated by Dr. Collins’ analysis showing that, of 701 component parts of DCM that appear to originate with Versata, 362 depend directly or indirectly on the Ximpleware parser. Collins Decl. ¶ 12. If Ximpleware’s software were to be removed from Version 3.9 of DCM, DCM would not function. Versata has admitted that fact:

Q: And I gather what you were saying ... is that if you pulled a few packages out of this set of packages it would have an effect on other packages within DCM?

A: It would have an effect on how DCM performs and doesn't perform.

Q: Okay. And – and depending upon the package, pulling a package out might make DCM not function at all?

A: Depending – yeah. Yes.

Q: And are there particular packages within DCM that you could identify as being more or less important in terms of the overall functioning of DCM than others?

A: No. DCM is a product suite that ships with multiple products and modules in it. There are different types of classes, but they're all equally important for functioning of DCM as a software application.

Redmond Ex. H at 121-122.

As a work incorporating and integrating the Ximpleware parser, DCM Version 3.9, *as a whole*, is governed by the terms and conditions of the GPL.

- “These requirements apply to the modified work as a whole.” (§ 5)
- “[B]y modifying or distributing the Program (or any work based on the Program), you indicate your acceptance of this License to do so, and all its terms and conditions for copying, distributing or modifying the Program or works based on it.” (*Id.*)

Collins Ex. B.

Ameriprise is accordingly entitled to a declaration that DCM Version 3.9 is subject to and governed by the GNU General Public License attached as Exhibit B to the Collins Declaration.

**D. Under The GPL, Ameriprise is Entitled to the Source Code for DCM Version 3.9**

Versata's decision to incorporate the free GPL-licensed Ximpleware software in DCM Version 3.9 imposes upon Versata the obligations of the GPL. Versata was required, among other things, to publish an appropriate copyright notice and disclaimer of warranty on each copy of DCM Version 3.9; to provide recipients of DCM Version 3.9 with a copy of the GPL; and to

license DCM 3.9 at no charge to recipients. *See* Collins Ex. B §§ 1-3, 6. The GPL also prohibits anyone who incorporates a GPL-licensed program from imposing any restrictions on the recipient's use of the distributed program that differ from those in the GPL. *Id.* § 6. Versata has not complied with *any* of these obligations. *See* Collins Decl. ¶¶ 10.

The key obligation relevant to this case is that, when Versata incorporated and integrated the open source Ximpleware parser into DCM Version 3.9 and distributed it to Ameriprise (among other customers), Versata agreed to accompany any distribution of the computer-executable version of DCM with the DCM source code, or with a written offer to provide the source code. The GPL expressly states this obligation in several sections:

These restrictions translate to certain responsibilities for you if you distribute copies of the software, or if you modify it. For example, if you distribute copies of such a program, whether gratis or for a fee, you must give the recipients all the rights that you have. *You must make sure that they, too, receive or can get the source code.*

Collins Ex. B, Preamble (emphasis added).

You may copy and distribute the Program (or a work based on it, under Section 2) in object code or executable form under the terms of Sections 1 and 2 above *provided that you also do one of the following:*

- a) Accompany it with the complete corresponding machine-readable source code, which must be distributed under the terms of Sections 1 and 2 above on a medium customarily used for software interchange; or
- b) Accompany it with a written offer, valid for at least three years, to give any third party, for a charge no more than your cost of physically performing source distribution, a complete machine-readable copy of the corresponding source code, to be distributed under the terms of Sections 1 and 2 above on a medium customarily used for software interchange ...

Collins Ex. B § 3 (emphasis added). Versata did not provide Ameriprise with DCM source code when it delivered DCM Version 3.9 to Ameriprise; nor did it accompany the delivery with a written offer to do so. And despite Ameriprise's demand, Versata has refused to provide

Ameriprise with the source code for DCM Version 3.9. *See* Redmond Ex. G; Redmond Decl. ¶ 9.

Ameriprise is accordingly entitled now to partial summary judgment establishing that Versata's provision of DCM Version 3.9 is subject to the terms and conditions of the GPL submitted as Collins Ex. B and, more specifically, that Ameriprise is entitled to the source code for DCM Version 3.9 in its entirety, subject only to the terms and conditions of the GPL.

#### IV. SUMMARY JUDGMENT EVIDENCE

In support of its motion, Ameriprise relies on the following evidence:

- Exhibit 1 – July 22, 2013 Declaration of Dr. John Collins (“Collins Decl.”), with attached exhibits (“Collins Ex.”). *(Served but not yet filed with the Court in conformance with Agreed Protective Order pending Versata's opportunity to seek a sealing order)*
  - Collins Ex. A – Resume of Dr. John Collins *(Served but not yet filed with the Court in conformance with Agreed Protective Order pending Versata's opportunity to seek a sealing order)*
  - Collins Ex. B – Version 2 of the GNU General Public License *(Served but not yet filed with the Court in conformance with Agreed Protective Order pending Versata's opportunity to seek a sealing order)*
- Exhibit 2 – July 23, 2013 Declaration of Heather Redmond (“Redmond Decl.”), with attached exhibits (“Redmond Ex.”).
  - Redmond Ex. A – Redacted Version of October 1999 Master License Agreement
  - Redmond Ex. B – Draft Notice of Deposition of Versata Corporate Representative
  - Redmond Ex. C – Versata's original response and objections to Interrogatory No. 7
  - Redmond Ex. D – Versata's original response and objections to Request for Production No. 13
  - Redmond Ex. E – Court Order overruling Versata's discovery objections

- Redmond Ex. F – Versata’s supplemental Response to Interrogatory No. 7  
*(Served but not yet filed with the Court in conformance with Agreed Protective Order pending Versata’s opportunity to seek a sealing order )*
- Redmond Ex. G – Letter from Ameriprise’s counsel to Versata’s counsel
- Redmond Ex. H – Excerpts of the Deposition of Versata’s Corporate Representative, including Exhibit 34 to the Deposition *(Served but not yet filed with the Court in conformance with Agreed Protective Order pending Versata’s opportunity to seek a sealing order )*

#### V. CONCLUSION AND REQUEST FOR RELIEF

Versata did not need to incorporate a third party’s intellectual property into DCM. It could have created an entirely proprietary set of software. But once it chose to incorporate Ximpleware open source code into its product and distributed it as a single, integrated package, Versata accepted the terms and conditions of the GPL and subjected its DCM software to a license – the GPL – that governs the distribution of DCM Version 3.9. Under the explicit, straightforward terms of the GPL, Ameriprise is entitled to obtain the source code for DCM Version 3.9 in its entirety and to use it freely, consistent with the terms of the GPL.

The Court should therefore grant Ameriprise’s Motion for Partial Summary Judgment and make the following declarations:

1. Versata’s DCM Version 3.9 software licensed to Ameriprise is subject to and governed by Version 2 of the GNU General Public License submitted as Collins Ex. B; and
2. Ameriprise is entitled, pursuant to the terms of Version 2 of the GNU General Public License, to obtain and freely use the source code for DCM Version 3.9 subject only to the terms and conditions of the GPL.



Respectfully submitted,

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**ATTORNEYS FOR COUNTERCLAIMANT  
AND DEFENDANTS**

**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the foregoing has been served on all counsel of record, as listed below on July 24, 2013.

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# **EXHIBIT 1**

**NO. D-1-GN-12-003588**

VERSATA SOFTWARE, INC., f/k/a TRILOGY  
SOFTWARE, INC., and VERSATA  
DEVELOPMENT GROUP, INC., f/k/a  
TRILOGY DEVELOPMENT GROUP, INC.,

Plaintiffs,

v

AMERIPRISE FINANCIAL, INC.,  
AMERIPRISE FINANCIAL SERVICES, INC.,  
AMERICAN ENTERPRISE INVESTMENT  
SERVICES, INC.,

Defendants.

IN THE DISTRICT COURT

TRAVIS COUNTY, TEXAS

53<sup>rd</sup> JUDICIAL DISTRICT

**DECLARATION OF JOHN EDGAR COLLINS, PH.D. IN SUPPORT OF  
AMERIPRISE'S MOTION FOR PARTIAL SUMMARY JUDGMENT**

I, John Edgar Collins, Ph.D., state and declare as follows:

1. I am an expert witness designated by Defendants in this case, and I offer this affidavit in connection with Defendants' Motion for Partial Summary Judgment. The facts and opinions I offer below are based on my education and experience and on my investigation and analyses described more fully below.

2. I am currently technical lead and co-founder of the Power TAC project ([www.powertac.org](http://www.powertac.org)). I have spent 33 years in the software industry and 11 years in academia. I have considerable experience as a developer, software architect, technical lead, and consultant. I earned a B.S. in Electrical Engineering from Iowa State University in 1969, an M.S. in Computer Science from the University of Minnesota in 1985, and a Ph. D. in Computer Science from the University of Minnesota in 2002.

3. After completing my Ph. D., I took a teaching position at the University of Minnesota, where I taught Operating Systems, Software Construction, Artificial Intelligence, and Software Design. For seven years, I directed the University's professional Masters degree program in Software Engineering. My publications are primarily in the intersection of Computer Science, Artificial Intelligence, and Economics. A true and correct copy of my resume is attached as Exhibit A.

4. My practical and academic experience has resulted in my becoming familiar with many varieties of open source software. I have spent time with Richard Stallman, a leader of the Free Software Foundation who is often considered a pioneer of the open source movement, discussing with him his philosophies of open source software. Much of the architecture of the Internet is based on open source software. For example, the most popular web page server on the Internet is an Apache software package subject to an Apache license, one form of open source license, and for that reason many web-based applications are subject to the Apache versions of open source licenses. I have attended debates between Apache personnel and Free Software Foundation personnel about their differing license approaches. I worked on producing an open source license for the University of Minnesota. I have been in the position of explaining to developers the differences between Apache and other open source licenses and why it can be important to steer clear of open source software.

5. Open source software is generally computer software that is publicly available in source code form and is available for use without charge, subject to the terms and conditions of an open source license. Some open source licenses require a user who distributes the software to provide or make available the source code to any recipients of the software and to prohibit the

imposition of restrictions on the recipients' use of the software. A few open source licenses are also considered "viral" licenses, in that their terms and conditions apply not only to the open source program being used, but also to the program into which the open source code is integrated, even if other portions of the program were otherwise considered proprietary and were developed separately from the open source software code with which it is integrated.

6. A true and correct copy of a prominent example of one type of viral open source license, Version 2 of the GNU General Public License, or "GPL," is attached as Exhibit B hereto. I downloaded a copy of this document from the "sourceforge.net" site on June 28, 2013. sourceforge.net is an Internet-based source code repository that acts as a central location for software developers to control and manage the distribution of free and open-source software.

7. One example of open source software is an XML parser offered by a company called Ximpleware, Inc. "XML" refers to "eXtensible Markup Language," a language for communicating structured data in a format that is both human-readable and machine-readable. An XML "parser" is a decoder that converts the human readable textual form of code into a binary data structure, commonly in the form of a tree. Ximpleware's parser is open source software that enables a program to read and parse XML files pulled from external sources, so that the program can understand and manipulate the contents of such files. Parsers are critical to making large enterprise software programs work, because they provide for a universal exchange language that ties together various pieces of a large, complex system.

8. Ximpleware's XML parser is freely available for download from the Internet at the sourceforge.net site. I have downloaded the Ximpleware parser from that site and have generally examined it. I have also examined the history of offerings of Ximpleware parsers on

that site. I can see from the site that the history of released versions goes back to 2004. The sourceforge site references at least seven identical licenses, applicable to various versions of the Ximpleware parser. The site establishes that Ximpleware software is offered pursuant to Version 2 of the GNU GPL, and I have found no evidence on the sourceforge site that Ximpleware software has ever been made available pursuant to any license other than Version 2 of the GNU GPL.

9. Exhibit B, which is Version 2 of the GNU GPL license, is the license used on the sourceforge site by the stated owners of Ximpleware software to license their software.

10. I understand that the most recent version of the Versata enterprise compensation software installed at Ameriprise is called DCM Version 3.9. I reviewed the DCM 3.9 software and its installation package, which contains compiled Java code, configuration files, an installer, and documentation. My objective was to analyze the structure of the system, to confirm whether it incorporated the Ximpleware XML parser, and, if so, to determine the extent to which it depends on the Ximpleware program. I also reviewed the licenses contained within DCM 3.9, to see whether it contained any version of the GPL. I concluded that DCM 3.9 did not contain any GPL license, although it does include licenses from the Apache Foundation, Sun Microsystems, the World-WideWeb Consortium (W3C), the Eclipse Foundation, and other sources.

11. My analysis included a review of the documentation, to gain an understanding of the structure and purpose of the DCM system. I also gained an understanding of the structure of the code in DCM Version 3.9, primarily by using the JDepend dependency-analysis tool. That tool is commonly used by experts in the software industry to analyze dependencies within software packages. Based upon my analysis of dependencies relating to Ximpleware, I

concluded that DCM Version 3.9 contains, or incorporates, Ximpleware, and that it does so in at least three distinct portions of DCM code. It is contained in a jar file called “vtd-xml.jar,” among other locations.

12. The first step in determining the extent to which the DCM code depends on the Ximpleware program was to build a directed dependency graph of Java packages rooted at packages with names beginning “com.ximpleware.” A “Java package” is a module of code contained within its own “namespace;” this is a fundamental means of structuring large systems. I focused on 701 packages with name prefixes “com.trilogy” and “com.versata,” because those packages were most likely to contain software that Versata considers to be proprietary. Within those 701 packages, I found that 362 packages, or over 50%, depend directly or indirectly on one of the “com.ximpleware” packages.

13. Using the GraphViz graphing tool, a commonly-used software graphing tool, I graphed the dependencies that were rooted at com.ximpleware. I determined that the graph is very large and dense, and that, if one were to print it out at a readable size, it would fill up the wall of a sizable conference room.

14. To get a clearer picture of these dependencies, I reduced the graph to a tree, removing all dependency relationships except for the first, shortest relationship. In other words, starting at the com.ximpleware packages, I identified and depicted through the GraphViz graphing package first the direct package dependencies for ximpleware, then the first level of indirect dependencies, and then the second level of indirect dependencies, and so on. I did this in such a way that each package only appears once, and included only the first dependency found in



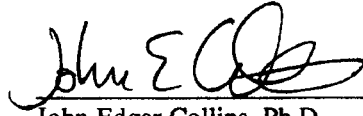
a breadth-first search of the full dependency graph. A true and correct copy of the outline of such dependencies that I caused to be generated is attached as Exhibit C.

15. Based on my review, I determined that the majority of the code in the DCM 3.9 system depends directly or indirectly on the com.ximpleware packages. All of the dependencies found by the JDepend dependency-analysis tool are either method-call dependencies or data dependencies. Since well-designed Java code generally avoids cross-package data dependencies, I concluded that all or virtually all of these dependencies involve either direct calls on the methods of classes in the com.ximpleware packages, or transitive method-call dependencies. In other words, many of the behaviors of the DCM 3.9 system are implemented by using behaviors provided by the com.ximpleware packages.

My name is John Edgar Collins, my date of birth is September 19, 1947, and my address is 1042 Golden Oaks Drive, Hudson, Wisconsin, in the United States.

I declare under penalty of perjury that the foregoing is true and correct.

Executed in St. Croix County, State of Wisconsin, on the 22d day of July, 2013.

  
John Edgar Collins, Ph.D.

John Collins, Ph.D.

Page 1 of 3

**John E. Collins**

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 email: jcollins@cs.umn.edu

**Capabilities****Research Interests**

- Autonomous agents for Electronic Commerce, focusing on automated negotiation and contracting. This is my thesis research area.
- Scheduling and resource allocation problems, especially those involving real-time incremental-improvement search, anytime search, stochastic search, search performance analysis.
- Constraint processing, modeling and simulation of organizations and processes.
- Distributed systems architecture.

**Technical Specialties:**

- Object-Oriented analysis and design, multi-tier component architectures, distributed objects.
- Project planning and management, OOA/OOD, software engineering.

**Experience**

Since Fall semester 2002, I am a Teaching Assistant Professor in the Computer Science department at the University of Minnesota. I teach in both the undergrad program and in the Master of Science in Software Engineering (MSSE) program. I expect to assume the directorship of the MSSE program in the next year or so.

Since 1998, I have taught a semester course in Distributed Object Systems in the University of Minnesota's MSSE program. The course is in the program because I submitted a proposal and was awarded a contract to develop it. I also teach the Advanced Software Engineering course in that program, and I developed and taught a 40-hour course on Enterprise Java Beans for the University's Continuing Engineering Education program.

Since October 1997, I have been an independent consultant. I have done technical pre-sales work, including customer interviews, project planning, risk analysis, and project proposals. I led a process improvement initiative for a local software company. Other projects have included technical analyses of potential partnerships and acquisitions, system architecture analysis, research and analysis on technology adoptions, and a detailed analysis of enterprise-class distributed object infrastructure products and standards.

I was at 3M from 1969 through 1997. While there, I had considerable freedom to explore and develop technologies, define products, put together business cases, propose projects, build development teams, and spend time with potential customers. At least 60% of my time at 3M was spent working on projects that I proposed. I am principal or co-inventor on 16 US patents. Highlights of my tenure at 3M include:

- 7 years researching, developing, and commercializing an advanced dynamic resource scheduling system for Field Service and similar markets. An alpha system was in production use inside 3M from 1993 through 1998. A Field Service product was field-tested and released, and was turned over to Imation. I conceived and sold the project initially. I alternated between technical leader and project leader for up to 17 people. 4 US patents have been issued related to this work.
- 4 years researching and developing a constraint-based system for altering garment patterns. The system was used for several research projects at the University of Minnesota and generated considerable excitement among potential customers. 3M decided not to pursue full commercialization and sold the 3 patents and all other rights to another company. During most of this period I led the team as it grew from 2 to 12 people.
- 2 years researching and developing an internal "demonstration of capability" application that predicted physical characteristics of polymer formulations. The system included a chemical structure editor and elaborate structure-matching capabilities. The prototype continued in use by several chemists until the Xerox Dandelion died.

John Collins, Ph.D.

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- 4 years as technical leader of an internal software and electronics design services group. Much of this work was in embedded systems. My role was divided among proposal writing, project organization and leadership, and development. A highlight was development of a page description language for an early version of a laser printer (around 1981).

### Education

Ph.D., Computer Science, University of Minnesota, 2002.

My research was primarily in advanced planning and scheduling systems in the context of autonomous agents. I was project leader for a research group studying issues in automated negotiation and electronic commerce. The group is designing and implementing the University of Minnesota's MAGNET market-oriented contracting system.

MS Computer Science, University of Minnesota, 1985.

BS, Electrical Engineering, Iowa State University, 1969.

### Memberships

ACM, American Association for Artificial Intelligence, IEEE Computer Society

### Selected recent publications

Many of these are publicly available [here](#).

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```
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## dependency-tree 2.txt

```

Level 0: com.ximpleware
  com.trilogy.fs.dms.tools
  com.trilogy.fs.dms.tools.loader
  com.trilogy.fs.dms.tools.loader.source
  com.trilogy.fs.dms.util
  com.versata.adhoc.tools
Level 1: com.trilogy.fs.dms.tools
  com.trilogy.fs.dms.awc
  com.trilogy.fs.dms.awc.buttons.directpayment
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  com.trilogy.fs.dms.directpayment
  com.trilogy.fs.dms.directpayment.transformer
  com.trilogy.fs.dms.dmpm.batch
  com.trilogy.fs.dms.dmpm.util
  com.trilogy.fs.dms.engine
  com.trilogy.fs.dms.modeling.processors
  com.trilogy.fs.dms.reporting.tools
  com.trilogy.fs.dms.tools.loader.postprocessor
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  com.trilogy.fs.primarycomp.util
  com.trilogy.fs.util
Level 1: com.trilogy.fs.dms.tools.loader
  com.trilogy.fs.dms.tools.loader.action
  com.trilogy.fs.dms.tools.loader.constant
  com.trilogy.fs.dms.tools.loader.destination
  com.trilogy.fs.dms.tools.loader.error
  com.trilogy.fs.dms.tools.loader.exception
  com.trilogy.fs.dms.tools.loader.extract
  com.trilogy.fs.dms.tools.loader.factory
  com.trilogy.fs.dms.tools.loader.htHandlers
  com.trilogy.fs.dms.tools.loader.ppclasses
  com.trilogy.fs.dms.tools.loader.resolve
  com.trilogy.fs.dms.tools.loader.row
  com.trilogy.fs.dms.tools.loader.rule
  com.trilogy.fs.dms.tools.loader.strategy
  com.trilogy.fs.dms.tools.loader.translate
  com.trilogy.fs.dms.tools.loader.trigger
  com.trilogy.fs.dms.tools.util
  com.trilogy.fs.dms.vif
  com.trilogy.tranzax.integration.util
  com.versata.adhoc.tools.extractor.destination
  com.versata.adhoc.tools.extractor.translate
Level 1: com.trilogy.fs.dms.util
  com.trilogy.awc
  com.trilogy.fs.debugframework
  com.trilogy.fs.dms.core.cascader
  com.trilogy.fs.dms.methods
  com.trilogy.fs.dms.pdb
  com.trilogy.fs.dms.provider
  com.trilogy.fs.dms.tranzax.integration.search
  com.versata.scheduler.job
  com.versata.scheduler.runjobschedule
Level 2: com.trilogy.fs.dms.awc

```

Page 1

EXHIBIT C

## dependency-tree 2.txt

```

com.trilogy.awc.ui.providers
com.trilogy.fs.dms.agreement.ui
com.trilogy.fs.dms.awc.agreement
com.trilogy.fs.dms.awc.agrhierarchy
com.trilogy.fs.dms.awc.comprel
com.trilogy.fs.dms.awc.contract
com.trilogy.fs.dms.awc.modeling.dataset
com.trilogy.fs.dms.awc.security
com.trilogy.fs.dms.methods.awc.providers
com.trilogy.fs.dms.scheduler.awc
com.trilogy.fs.dms.uicore.pp
com.trilogy.fs.twc.ext.format
com.versata.fs.dms.awc
com.versata.fs.dms.methods.awc.providers
Level 2: com.trilogy.fs.dms.core.validator
com.trilogy.fs.dms.dmpm
com.trilogy.fs.dms.agreement
com.trilogy.fs.dms.agreement.hierarchy
com.trilogy.fs.dms.awc.providers
com.trilogy.fs.dms.big
com.trilogy.fs.dms.businessrules.manager
com.trilogy.fs.dms.comprel
com.trilogy.fs.dms.contract
com.trilogy.fs.dms.contract.ui
com.trilogy.fs.dms.core
com.trilogy.fs.dms.core.hierarchy
com.trilogy.fs.dms.core.security
com.trilogy.fs.dms.core.validator.ui
com.trilogy.fs.dms.directpayment.ui
com.trilogy.fs.dms.dmpm
com.trilogy.fs.dms.dmpm.engine.processor
com.trilogy.fs.dms.importer
com.trilogy.fs.dms.mccformula
com.trilogy.fs.dms.niprgateway
com.trilogy.fs.dms.pdb.migration
com.trilogy.fs.dms.prodhier
com.trilogy.fs.dms.ruleEngine.ce.core
com.trilogy.fs.dms.ruleEngine.ce.core.tests
com.trilogy.fs.dms.ruleEngine.core
com.trilogy.fs.dms.security
com.trilogy.fs.dms.setup
com.trilogy.fs.dms.tools.helpers
com.trilogy.fs.dms.tools.loader.validator
com.trilogy.fs.dms.tools.xmlhandlers
com.trilogy.fs.dms.transmgr.transaction
com.trilogy.fs.dms.ui
com.trilogy.fs.dms.ui.agrhierarchy
com.trilogy.fs.dms.ui.hierarchy
com.trilogy.fs.dms.versioning
com.trilogy.fs.dms.webeft.processors
com.trilogy.fs.tools.xmlhandlers
com.trilogy.fs.transformer.tools.loader.strategy
com.trilogy.fs.twc.ext
com.trilogy.fs.twc.ext.accessor.validator
com.versata.fs.dms.core.validator
com.versata.scheduler.xmlhandler
Level 2: com.trilogy.fs.dms.directpayment
com.trilogy.fs.dms.engine.resultcomparison
Level 2: com.trilogy.fs.dms.dmpm.batch
com.trilogy.fs.dms.engine.runner
Level 2: com.trilogy.fs.dms.dmpm.util
com.trilogy.fs.dms.dmpm.debug
com.trilogy.fs.dms.dmpm.engine

```

dependency-tree 2.txt

Level 2: com.trilogy.fs.dms.reporting.tools  
 com.trilogy.reporting.awc.ui

Level 2: com.trilogy.fs.dms.webeft.xmlmapper  
 com.trilogy.fs.dms.webeft  
 com.trilogy.fs.dms.webeft.xmlmapper.util

Level 2: com.trilogy.fs.primarycomp.batch  
 com.trilogy.fs.primarycomp.tools

Level 2: com.trilogy.fs.primarycomp.util  
 com.trilogy.fs.dms.engine.vestedcomp  
 com.trilogy.fs.primarycomp.engine  
 com.trilogy.fs.primarycomp.loader  
 com.trilogy.fs.primarycomp.manager.server  
 com.trilogy.fs.primarycomp.methods

Level 2: com.trilogy.fs.util  
 com.trilogy.awc.treecontrol  
 com.trilogy.cm.engine  
 com.trilogy.fs.audit  
 com.trilogy.fs.dms.awc.buttons.parties  
 com.trilogy.fs.dms.compengine  
 com.trilogy.fs.dms.core.enum.xml  
 com.trilogy.fs.dms.core.enums.bb  
 com.trilogy.fs.dms.core.lock  
 com.trilogy.fs.dms.core.security.tools  
 com.trilogy.fs.dms.engine.core  
 com.trilogy.fs.dms.modeling.ui  
 com.trilogy.fs.dms.niprgateway.transaction.providers  
 com.trilogy.fs.dms.ruleEngine.core.preconditions  
 com.trilogy.fs.dms.ruleEngine.core.tests  
 com.trilogy.fs.dms.setup.products  
 com.trilogy.fs.dms.tools.adhoc  
 com.trilogy.fs.dms.tools.migration  
 com.trilogy.fs.transformer.core  
 com.trilogy.fs.transformer.tools.util  
 com.trilogy.reporting.ui  
 com.trilogy.reporting.ui.providers  
 com.trilogy.util.override  
 com.versata.scheduler.schedulerunner  
 com.versata.util.uideveloper  
 com.versata.util.uideveloper.dcm.search

Level 2: com.trilogy.awc  
 com.trilogy.awc.buttons.directpayment  
 com.trilogy.awc.core  
 com.trilogy.awc.format  
 com.trilogy.awc.test  
 com.trilogy.awc.xslt  
 com.trilogy.fs.dms.awc.buttons  
 com.trilogy.fs.dms.awc.buttons.dmpm  
 com.trilogy.fs.dms.awc.format  
 com.trilogy.fs.dms.awc.transmgr  
 com.trilogy.fs.dms.awc.transmgr.compevent  
 com.trilogy.fs.dms.awc.transmgr.transaction  
 com.trilogy.fs.dms.dmpm.ui  
 com.trilogy.fs.dms.scheduler.methods.awc.providers  
 com.trilogy.fs.dms.ui.clientcontract  
 com.trilogy.fs.dms.ui.mask  
 com.trilogy.fs.dms.ui.providers  
 com.trilogy.fs.dms.uicore  
 com.trilogy.reporting.ui.datasource

Level 2: com.trilogy.fs.debugframework  
 com.trilogy.cm.engine.debug  
 com.trilogy.ipp.util

Level 2: com.trilogy.fs.dms.pdb  
 com.trilogy.fs.dms.big.providers

```

dependency-tree 2.txt
com.trilogy.fs.dms.core.validator.utility
com.trilogy.fs.dms.pdb.install
com.trilogy.fs.dms.pdb.report.impl
com.trilogy.fs.dms.ruleEngine.niprgateway
com.trilogy.util.dataMapping
Level 2: com.versata.scheduler.job
com.versata.scheduler.commandbuilder
Level 3: com.trilogy.fs.dms.contract
com.trilogy.fs.dms.methodology
Level 3: com.trilogy.fs.dms.core
com.trilogy.fs.dms
com.trilogy.fs.dms.bwc
com.trilogy.fs.dms.constants
com.trilogy.fs.dms.core.status
com.trilogy.fs.dms.core.status.properties
com.trilogy.fs.dms.install
com.trilogy.fs.dms.licenseappt
com.trilogy.fs.dms.ruleEngine
com.trilogy.fs.dms.ruleEngine.ce
com.trilogy.fs.dms.ruleEngine.ce.core.preconditions
com.trilogy.fs.dms.ruleEngine.niprgateway.core.tests
com.trilogy.fs.dms.tranzax.integration
com.trilogy.fs.dms.webeft.providers
com.trilogy.fs.transformer.tools.loader.translate
com.trilogy.fs.twc.ext.locator.nodes
com.trilogy.reporting.tools
com.versata.adhoc.format
com.versata.fs.correspondence.controller
com.versata.fs.correspondence.monitor
com.versata.fs.correspondence.processor
com.versata.fs.dms.migration
com.versata.fs.tws.acordpIService.extractor
com.versata.fs.tws.acordpIService.validator.builder
com.versata.scheduler
com.versata.scheduler.utils
Level 3: com.trilogy.fs.dms.core.hierarchy
com.trilogy.fs.effectivity
Level 3: com.trilogy.fs.dms.core.security
com.trilogy.fs.dms.core.test
com.trilogy.fs.tws.framework.hessian.impl
com.trilogy.ipp.service.internal
com.trilogy.portlet
com.versata.fs.tws.genericService.impl
Level 3: com.trilogy.fs.dms.niprgateway
com.trilogy.fs.dms.niprgateway.fieldGenerators
Level 3: com.trilogy.fs.dms.ruleEngine.core
com.trilogy.fs.dms.engine.licensecheck
com.trilogy.fs.dms.ruleEngine.niprgateway.core.preconditions
com.versata.fs.tws.acordpIService.validator
Level 3: com.trilogy.fs.dms.ui
com.trilogy.fs.dms.core.security.util
com.trilogy.fs.dms.ui.lock
Level 3: com.trilogy.fs.tools.xmlhandlers
com.trilogy.fs.tools
com.trilogy.fs.tools.helpers
com.trilogy.fs.tools.schema
Level 3: com.trilogy.fs.transformer.tools.loader.strategy
com.trilogy.fs.transformer.tools
com.trilogy.fs.transformer.tools.loader
com.trilogy.fs.transformer.tools.loader.resolve
Level 3: com.trilogy.fs.twc.ext.accessor.validator
com.trilogy.fs.twc.ext.locator
Level 3: com.trilogy.fs.primarycomp.tools

```

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                                dependency-tree 2.txt
com.trilogy.fs.primarycomp.install
Level 3: com.trilogy.cm.engine
      com.trilogy.cm.engine.migration
Level 3: com.trilogy.fs.dms.core.lock
      com.trilogy.fs.dms.webeft.util
Level 3: com.trilogy.fs.dms.tools.adhoc
      com.versata.reporting.util
Level 3: com.trilogy.fs.transformer.tools.util
      com.trilogy.fs.transformer.tools.loader.destination
      com.trilogy.fs.transformer.tools.loader.error
      com.trilogy.fs.transformer.tools.loader.source
Level 3: com.trilogy.util.override
      com.trilogy.fs.dms.ui.contract
      com.trilogy.fs.dms.ui.navbar
      com.trilogy.fs.hierarchy
Level 3: com.versata.scheduler.schedulerrunner
      com.versata.scheduler.requestprocessor
Level 3: com.versata.util.uideveloper
      com.versata.util.uideveloper.dcm.flyout
Level 3: com.trilogy.fs.dms.uicore
      com.trilogy.awc.ui
      com.trilogy.html.gui.core
      com.trilogy.html.gui.ext.access
      com.trilogy.html.gui.ext.activator
      com.trilogy.html.gui.ext.jsp
Level 3: com.trilogy.ipp.util
      com.trilogy.fs.primarycomp.manager.client
      com.trilogy.ipp.methods
      com.trilogy.ipp.transport.testing
      com.trilogy.ipp.ui.core.actions
      com.trilogy.ipp.ui.methodology.dialogs
      com.trilogy.ipp.ui.methodology.template
      com.trilogy.ipp.ui.modelcontent
      com.trilogy.ipp.ui.modelcontent.actions.models
      com.trilogy.ipp.ui.table
      com.trilogy.ipp.ui.table.dialogs
      com.trilogy.ipp.util.ui
      com.trilogy.ipp.util.xmlrb
Level 3: com.trilogy.fs.dms.pdb.report.impl
      com.trilogy.fs.dms.pdb.report
Level 4: com.trilogy.fs.transformer.tools.loader.translate
      com.versata.fs.tws.acordservice.translate
      com.versata.fs.tws.drservice.translate
      com.versata.fs.tws.genericservice.builder
Level 4: com.trilogy.reporting.tools
      com.versata.fs.correspondence.reportgenerator
Level 4: com.versata.fs.correspondence.controller
      com.versata.fs.correspondence.engine
Level 4: com.versata.fs.correspondence.monitor
      com.versata.fs.correspondence.targetgenerator
Level 4: com.versata.fs.correspondence.processor
      com.versata.fs.correspondence.distributor
      com.versata.fs.correspondence.email
      com.versata.fs.correspondence.generator
Level 4: com.versata.scheduler.utils
      com.versata.scheduler.monitor
Level 4: com.trilogy.fs.effectivity
      com.trilogy.fs.effectivity.test
      com.trilogy.fs.hierarchy.effectivity
Level 4: com.trilogy.ipp.service.internal
      com.trilogy.ipp.service.internal.config
      com.trilogy.ipp.service.internal.inputType
      com.trilogy.ipp.service.internal.lock

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dependency-tree 2.txt
com.trilogy.ipp.service.internal.methodology
com.trilogy.ipp.service.internal.misc
com.trilogy.ipp.service.internal.model
com.trilogy.ipp.service.internal.namedConstant
com.trilogy.ipp.service.internal.questionnaire
com.trilogy.ipp.service.internal.rename
com.trilogy.ipp.service.internal.table
com.trilogy.ipp.service.internal.testing
com.trilogy.ipp.service.internal.variables
com.trilogy.ipp.transport.commands
Level 4: com.versata.fs.tws.genericService.impl
com.versata.fs.tws.drService.extractor
Level 4: com.trilogy.fs.tools
com.trilogy.fs.tools.test
com.trilogy.fs.tools.verifier
Level 4: com.trilogy.fs.tools.helpers
com.trilogy.fs.tools.format
com.trilogy.fs.tools.format.xml
com.trilogy.fs.tools.format.xsd
Level 4: com.trilogy.fs.tools.schema
com.trilogy.fs.tools.util
Level 4: com.trilogy.fs.transformer.tools.loader
com.trilogy.fs.transformer.tools.loader.action
com.trilogy.fs.transformer.tools.loader.constant
com.trilogy.fs.transformer.tools.loader.extract
com.trilogy.fs.transformer.tools.loader.row
com.trilogy.fs.transformer.tools.loader.trigger
Level 4: com.trilogy.fs.dms.webeft.util
com.trilogy.webeft.jaxbgen.IndividualInformationReport.impl
com.trilogy.webeft.jaxbgen.MapParser.impl
com.trilogy.webeft.jaxbgen.PostAccountingReport.impl
com.trilogy.webeft.jaxbgen.PostApprovalsReport.impl
com.trilogy.webeft.jaxbgen.PostDeficienciesReport.impl
com.trilogy.webeft.jaxbgen.PostEnrollmentsReport.impl
com.trilogy.webeft.jaxbgen.PostExamsReport.impl
com.trilogy.webeft.jaxbgen.PostFingerprintReport.impl
com.trilogy.webeft.jaxbgen.PostPendingReport.impl
com.trilogy.webeft.jaxbgen.PostTerminationReport.impl
com.trilogy.webeft.jaxbgen.u4.impl
Level 4: com.trilogy.html.gui.core
com.trilogy.html.gui
com.trilogy.html.gui.core.grid
com.trilogy.html.gui.core.pp
Level 4: com.trilogy.ipp.transport.testing
com.trilogy.ipp.transport.commands.testing
com.trilogy.ipp.ui.modelcontent.actions.methods
com.trilogy.ipp.ui.modelcontent.actions.testCases
com.trilogy.ipp.ui.testing
com.trilogy.ipp.ui.testing.actions
Level 4: com.trilogy.ipp.ui.core.actions
com.trilogy.ipp.ui.core
Level 4: com.trilogy.ipp.ui.methodology.dialogs
com.trilogy.ipp.ui.methodology
com.trilogy.ipp.ui.methodology.actions
Level 4: com.trilogy.ipp.ui.methodology.template
com.trilogy.ipp.ui.util
Level 4: com.trilogy.ipp.ui.modelcontent
com.trilogy.ipp.ui.config
com.trilogy.ipp.ui.modelcontent.actions.config
com.trilogy.ipp.ui.modelcontent.actions.consts
com.trilogy.ipp.ui.modelcontent.actions.contVars
com.trilogy.ipp.ui.modelcontent.actions.dateVars
com.trilogy.ipp.ui.modelcontent.actions.discVars

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dependency-tree 2.txt
com.trilogy.ipp.ui.modelcontent.actions.questionnaires
com.trilogy.ipp.ui.modelcontent.actions.strVars
com.trilogy.ipp.ui.modelcontent.actions.tables
com.trilogy.ipp.ui.modelcontent.actions.validity
com.trilogy.ipp.ui.modelcontent.dialogs
com.trilogy.ipp.ui.questionnaire
Level 4: com.trilogy.ipp.ui.table
com.trilogy.ipp.ui.table.actions
Level 4: com.trilogy.ipp.util.ui
com.trilogy.ipp.util.ui.ste
Level 4: com.trilogy.ipp.util.xmlrb
com.trilogy.ipp.ui.methodology.stepFormatter
Level 5: com.trilogy.ipp.transport.commands
com.trilogy.fs.primarycomp.manager.transport
com.trilogy.ipp.service
com.trilogy.ipp.service.rmi
com.trilogy.ipp.transport
com.trilogy.ipp.transport.commands.config
com.trilogy.ipp.transport.commands.inputType
com.trilogy.ipp.transport.commands.lock
com.trilogy.ipp.transport.commands.methodology
com.trilogy.ipp.transport.commands.misc
com.trilogy.ipp.transport.commands.model
com.trilogy.ipp.transport.commands.namedConstant
com.trilogy.ipp.transport.commands.questionnaire
com.trilogy.ipp.transport.commands.rename
com.trilogy.ipp.transport.commands.table
com.trilogy.ipp.transport.commands.variables
Level 5: com.trilogy.webeft.jaxbgen.IndividualInformationReport.impl
com.trilogy.webeft.jaxbgen.IndividualInformationReport
Level 5: com.trilogy.webeft.jaxbgen.MapParser.impl
com.trilogy.webeft.jaxbgen.MapParser
Level 5: com.trilogy.webeft.jaxbgen.PostAccountingReport.impl
com.trilogy.webeft.jaxbgen.PostAccountingReport
Level 5: com.trilogy.webeft.jaxbgen.PostApprovalsReport.impl
com.trilogy.webeft.jaxbgen.PostApprovalsReport
Level 5: com.trilogy.webeft.jaxbgen.PostDeficienciesReport.impl
com.trilogy.webeft.jaxbgen.PostDeficienciesReport
Level 5: com.trilogy.webeft.jaxbgen.PostEnrollmentsReport.impl
com.trilogy.webeft.jaxbgen.PostEnrollmentsReport
Level 5: com.trilogy.webeft.jaxbgen.PostExamsReport.impl
com.trilogy.webeft.jaxbgen.PostExamsReport
Level 5: com.trilogy.webeft.jaxbgen.PostFingerprintReport.impl
com.trilogy.webeft.jaxbgen.PostFingerprintReport
Level 5: com.trilogy.webeft.jaxbgen.PostPendingReport.impl
com.trilogy.webeft.jaxbgen.PostPendingReport
Level 5: com.trilogy.webeft.jaxbgen.PostTerminationReport.impl
com.trilogy.webeft.jaxbgen.PostTerminationReport
Level 5: com.trilogy.webeft.jaxbgen.u4.impl
com.trilogy.webeft.jaxbgen.u4
Level 5: com.trilogy.html.gui
com.trilogy.html.gui.core.filter
com.trilogy.html.gui.core.inspector
com.trilogy.html.gui.core.toolbar
com.trilogy.html.gui.dialog
Level 6: com.trilogy.ipp.transport
com.trilogy.ipp.engine.methods
com.trilogy.ipp.engine.xml
Level 7: com.trilogy.ipp.engine.xml
com.trilogy.ipp.engine.tools

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# **EXHIBIT 2**

NO. D-1-GN-12-003588

VERSATA SOFTWARE, INC., f/k/a TRILOGY  
SOFTWARE, INC., and VERSATA  
DEVELOPMENT GROUP, INC., f/k/a  
TRILOGY DEVELOPMENT GROUP, INC.,

Plaintiffs,

v

AMERIPRISE FINANCIAL, INC.,  
AMERIPRISE FINANCIAL SERVICES, INC.,  
AMERICAN ENTERPRISE INVESTMENT  
SERVICES, INC.,

Defendants.

IN THE DISTRICT COURT

TRAVIS COUNTY, TEXAS

53<sup>rd</sup> JUDICIAL DISTRICT

**DECLARATION OF HEATHER D. REDMOND IN SUPPORT OF  
AMERIPRISE'S MOTION FOR PARTIAL SUMMARY JUDGMENT**

I, Heather D. Redmond, state and declare as follows:

1. I am over the age of 21 and competent to make this Declaration. I have personal knowledge of the facts set forth herein and I offer this declaration in connection with Defendants' Motion for Partial Summary Judgment. I am a partner in the law firm of Dorsey & Whitney LLP and one of the outside counsel representing Defendants in this case.
2. Attached as Exhibit A is a true and correct redacted copy of the October 1999 Master License Agreement ("MLA") between Ameriprise and Versata. The MLA is redacted as agreed by the parties to allow for public filing.
3. On January 30, 2013, Ameriprise served Versata with a set of interrogatories and document requests, and also with a Notice of Taking Corporate Deposition, in connection with a related proceeding in Minnesota state court. Attached as Exhibit B is a true and correct copy of the Notice of Deposition. The Minnesota litigation was subsequently stayed, and the parties

agreed that Ameriprise could re-serve its discovery requests in connection with this action, and that Versata's written responses would be served on or before March 15, 2013. The parties also agreed that Versata would provide Ameriprise with some possible dates for the corporate deposition.

4. Attached as Exhibit C is a true and correct copy of Versata's original response and objections to Ameriprise's Interrogatory No. 7.

5. Attached as Exhibit D is a true and correct copy of Versata's original response and objections to Ameriprise's Request for Production No. 13.

6. Despite several subsequent requests by Ameriprise, Versata refused to identify a corporate representative or to provide dates for the corporate deposition of Versata.

7. Ameriprise moved to compel responses, and on May 8, 2013, the Court overruled Versata's objections and ordered Versata to identify its third-party licensors of components of DCM (Interrogatory 7), to produce all licenses from such licensors (Document Request 13), and to designate witnesses to testify on the topics in Ameriprise's notice. Attached as Exhibit E is a true and correct copy of the Order. Although the Court's Order required Versata's compliance within three days, the parties agreed that Versata could have two weeks – until May 22, 2013 – to respond and produce documents.

8. Attached as Exhibit F is a true and correct copy of Versata's May 22, 2013 supplemental response to Interrogatory No. 7. Consistent with its interrogatory response, we could locate within Versata's May 22 production of more than 175,000 documents only one license agreement, an agreement between Versata and its affiliate G-Dev FZ-LLC.

9. Attached as Exhibit G is a true and correct copy of June 19, 2013 correspondence from Peter Lancaster, counsel for Ameriprise, to Amir Alavi, counsel for Versata. Versata has refused to provide Ameriprise with the source code for DCM Version 3.9.

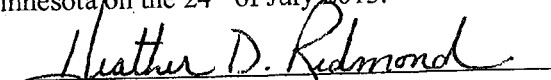
10. As of the date I executed this Declaration, I have seen no evidence that Versata has produced any evidence of any license or agreement with Ximpleware other than the GPL attached as Exhibit B to the Declaration of John Collins.

11. Attached as Exhibit H is a true and correct copy of the transcript of the June 14, 2013 deposition of Versata, along with Exhibit 34 to the deposition. Versata designated the transcript as Confidential – Attorneys' Eyes Only under the Stipulated Protective Order.

My name is Heather Dawn Redmond, my date of birth is July 26, 1975, and my business address is Dorsey & Whitney, Suite 1500, 50 South Sixth Street, Minneapolis, Minnesota, 55402.

I declare under penalty of perjury that the foregoing is true and correct.

Executed in Hennepin County, State of Minnesota on the 24<sup>th</sup> of July 2013.

  
Heather D. Redmond

# **EXHIBIT A**

MASTER LICENSE AGREEMENT

Licensor (Name and Address):  
Trilogy Software, Inc. ("Licensor")  
6034 West Courtyard Drive  
Austin, TX 78730

Agreement No.: AEFA100499-JW01

Effective Date: October 4, 1999

This Master License Agreement ("Agreement") is made and entered into as of the Effective Date above between American Express Financial Corporation having an office at IDS Tower 10, Minneapolis, Minnesota 55440 ("Amexco") and the Licensor specified above.

ARTICLE 1: PROVISION OF PROGRAMS

- 1.1 Under the provisions of this Agreement, Licensor agrees to grant Amexco licenses to use Licensor's proprietary computer programs in object code only (the "Software") and the documentation that Licensor makes generally available in hard copy or electronic form, to its general customer base in conjunction with the licensing of such thereto (the "Documentation") (Software and Documentation are referred to collectively as the "Products") which are listed on Schedules substantially in the form attached as Exhibit A ("Schedule").
  - 1.1.1 The parties agree to enter into good faith negotiations to execute a mutually agreeable agreement for consulting services. Until such an agreement is executed, this Agreement permits Amexco to obtain Licensor's pre-installation services to customize, modify and/or enhance Products, to develop programs, software and materials related to Products, and/or such other services as the parties mutually agree upon ("Custom Services") on an interim basis and at Licensor's standard rates. Custom Services along with the applicable rates shall be specified on an Interim Custom Service Attachment substantially in the form attached hereto as Exhibit B.
- 1.2 Each Schedule shall be numbered and dated to facilitate identification and when executed by both parties shall form a separate agreement which hereby incorporates by reference, without any further reference in the applicable Schedule, the terms and conditions of this Agreement, as amended or modified on the applicable Schedule. Each Schedule shall include: (i) the Amexco site where each Product is to be delivered ("Installation Site"); (ii) the name and/or other description of each Product; (iii) the date each Product is to arrive at the Installation Site ("Scheduled Delivery Date"); (iv) the scope of each Product license, if different than as defined in Article 4; (v) the charge for the license for each Product ("License Fee"); (vi) the maintenance charges for each Product, ("Maintenance Fee") and whether such Maintenance Fees are monthly, quarterly, annual or otherwise; and (vii) any other provisions the parties mutually agree upon.
  - 1.2.1 In the event of any inconsistency between this Agreement and any Schedule, the provisions of such Schedule shall govern for purposes of such Schedule.



- 1.3 Amexco, its parent, subsidiaries and "Affiliates" (as defined herein) (collectively, "Amexco Entities") may execute Schedules with Licensor under this Agreement and for purposes of such Schedule shall be considered "Amexco" as that term is used throughout this Agreement. An Affiliate shall mean any company, which shares with Amexco a common owner who owns 50%, or more of the outstanding voting stock in both Amexco and such company. Amexco agrees to ensure that all Amexco Entities must have agreed in writing to be bound by the terms and conditions of this Agreement prior to use of the Software. Amexco hereby agrees to provide to Licensor, within thirty (30) days of request, a then current list of Amexco Entities for whom Software may be licensed hereunder.

## ARTICLE 2: DELIVERY, REPRODUCTION, DISTRIBUTION AND REPORTS

- 2.1 Unless otherwise defined on the applicable Schedule, Licensor shall deliver one master copy of each Product (the "Master Copy") to Amexco on or before, but in no event later than ten (10) days after its Scheduled Delivery Date solely for the purpose of allowing Amexco to make copies of the Product that are reasonably necessary for distribution to and use by each user or server authorized per the license scope defined herein and on the applicable Schedule. For purposes of this Agreement, delivery shall be deemed complete when Licensor physically delivers or causes a third party to deliver, a Master Copy to Amexco, or makes the Master Copy available to Amexco for downloading from Licensor's File Transfer Protocol ("FTP") site, and has provided Amexco with the appropriate password to access the FTP site. Amexco's right to reproduce the Master Copy shall be limited to the Installation Site. Amexco shall assume all responsibility for the quality of the copies made hereunder.
- 2.2 Without limiting the foregoing, Amexco shall have the right to use the Software on temporary substitute or back-up equipment. Subject to the terms of the Schedule, Amexco shall also be entitled to make and keep a reasonable number of copies of each Product, Update and its Documentation for its own internal use.
- 2.3 Amexco shall include all copyright notices, proprietary legends, and trademark and service mark attributions, any patent markings, and other indicia of ownership on all copies of the Product in the content and format as those, which were contained on the Master Copy. Amexco shall pay all duplication and distribution costs incurred by Amexco in making copies of the Products, and any updates, new releases or enhancements that Licensor makes generally available and provides to Amexco pursuant to the maintenance provisions hereunder (the "Updates"), and shall also pay all custom duties and fees if applicable. Subject only to the license granted herein, all copies of the Software are the property of Licensor or its third party licensors, if any, from whom Licensor has obtained the marketing rights (the "Third Party Licensors").
- 2.4 Amexco agrees that Licensor subject to this section may, upon thirty (30) days prior written notice, enter Amexco's premises to verify Amexco's compliance with the provisions of this Agreement. Licensor's inspections shall be limited to (i) one annual inspection; (ii) Amexco's normal business hours; and (iii) those records pertaining to the Products and Updates (as delivered to Amexco under any Schedule) licensed hereunder. Licensor's rights of inspection shall remain in effect through the period ending six (6) months from the termination or expiration of this Agreement.



**ARTICLE 3: DOCUMENTATION AND TRAINING**

- 3.1 Upon delivery of each Product or any Update of the Product to be made available to Amexco pursuant to the maintenance provisions herein, and contemporaneously with such delivery whenever possible, Licensor shall deliver to Amexco one (1) copy of all generally available Documentation (if applicable) for such Product or Update, and any necessary and generally available release notes or other written descriptions relating to any Update sufficient to enable a reasonable person, who is skilled in the software industry to use and to understand the use and operations of the Product or Update. Amexco may copy the Documentation only to the extent reasonably necessary to satisfy its own internal requirements or may request Licensor to furnish additional copies at Licensor's current standard prices less any applicable discounts.
- 3.2 If training is required and/or included for a Product, the charge, duration, nature and other particulars applicable to such training shall be arranged pursuant to the terms and conditions of the Education Services Schedule, attached hereto as Exhibit C.

**ARTICLE 4: SCOPE OF LICENSE AND PROPRIETARY RIGHTS**

- 4.1 Unless otherwise agreed in this Agreement or on an applicable Schedule, subject to Amexco's fulfillment of all of its obligations hereunder, Licensor grants to Amexco a non-exclusive, nontransferable (except as permitted herein), perpetual, worldwide license to use the Software, including any Updates, and all related Documentation, commencing upon its delivery to Amexco and continuing thereafter from the date of Amexco's acceptance of the Product or Update subject to the Warranty provisions herein, as the case may be, for the License Term specified on the Schedule, unless terminated earlier in accordance with this Agreement.
- 4.2 Unless otherwise agreed on an applicable Schedule, if the applicable Schedule does not define a limited number of users then the license granted shall be a Site License with unlimited users. For the purpose of this Agreement, the parties agree that "Site License" shall mean that Amexco may use the Product(s), Updates, and related Documentation, in Amexco's business on any of its computers and at the Installation Site or any other Amexco data center location and on more than one computer at a time subject to any additional license scope restrictions provided on the Schedule.
- 4.3 If the default provisions of Section 5.2 do not apply, and if the Schedule designates a limited number of users then the Product licensed pursuant to the Schedule may be accessed by that designated number of individual users. Amexco may designate different users at any time without notice to Licensor so long as the permitted number of users is not exceeded.
- 4.4 Unless otherwise agreed and specified in the applicable Schedule, Licensor agrees that Amexco shall have the right, to (a) use, copy, execute, display, enhance, update, maintain (directly or through a third party pursuant to the provisions of this Agreement) the Products, Updates and Documentation and/or materials provided to Amexco hereunder only to the

extent that such use, copying, executing, displaying, enhancing, updating, and maintaining are described in the applicable Documentation and (b) use the Products in conjunction with other programs and/or materials.

- 4.5 Amexco shall not (i) use the Products to process, or permit to be processed, the data of any other party unless such data is processed for Amexco purposes only; or (ii) use the Products for service bureau or commercial time-sharing use, unless otherwise expressly permitted in the License Schedule.
- 4.6 Unless otherwise agreed and specified in the applicable Schedule, with regard to the object code and source code version of any software code developed by Licensor in its performance of Custom Services for Amexco as defined in Section 1.1.1 of this Agreement (the "Programs"), Licensor hereby grants to Amexco, at no additional charge (upon payment of all service fees attributable to such services), a worldwide, nonexclusive, license (i) to modify and otherwise create derivative works based on the Programs and (ii) to reproduce, distribute, perform and display (publicly or otherwise), and otherwise use and exploit the Programs and derivative works thereof in connection with the Software as defined herein.
- 4.7 Amexco's use of any Products labeled on Schedules as "Software Tools" is limited to those locations where Amexco conducts its business in the ordinary course (the "Authorized Locations") and Amexco shall use reasonable efforts to ensure that all such users have been adequately trained and are competent in the use of the Software Tools.
- 4.8 Unless otherwise specifically provided in the License Schedule, users of the Software may include only (i) employees of the Amexco Entity or Entities who have entered into the applicable Schedule and; (ii) subject to Article 10, "Confidential Information", third party contractors of Amexco Entities who do not, to the best of Amexco's knowledge, compete with Licensor in the development of enterprise compensation or configuration software ("Permitted Contractors"). Amexco shall ensure that all Permitted Contractors have signed a Non-Disclosure Agreement substantially the same as that attached hereto.
  - 4.8.1 Nothing herein shall limit Amexco's right to access and use Products in connection with any associated or interconnected networks, peripherals, equipment and devices, unless otherwise specifically prohibited or limited in an applicable Schedule.
- 4.9 Licensor retains title to the Products provided hereunder and does not convey any proprietary rights or other interest therein to Amexco, other than the licenses granted hereunder. Amexco agrees not to sell, assign or otherwise transfer the Product(s) or the license granted hereunder, or sublicense the Products to any third party, except as otherwise provided in this Agreement.
- 4.10 At least sixty (60) days prior to the expiration of each License Term (if applicable), Licensor shall notify Amexco of such expiration and Amexco shall have the option to continue the license of such Product for any additional License Term selected by Amexco. Amexco shall notify Licensor in writing if it opts to continue a Product license and License Term for any such continuation. The License Fee applicable to any continuation of a Product license

("Renewal Fee") shall be the lesser of: (a) the License Fee applicable to the current License Term (if the terms are equivalent); (b) Licensor's then current License Fee applicable to the renewal License Term; or (c) such other license fee as is mutually agreed upon by the parties. Notwithstanding anything herein to the contrary, License Terms shall continue at no additional charge to the end of the License Term or for sixty (60) days after receipt of Licensor's notice referred to above, whichever is later, and thereafter, if Amexco exercises the option to continue the license as provided hereunder.

#### Article 5: ESCROW AGREEMENT

- 5.1 The parties agree to put source code and all the generally available Documentation thereto, for a Product or Updates ("Deposit Materials") in escrow with an independent third party escrow agent in accordance with the terms and conditions of a source escrow agreement materially similar to that which has been attached hereto as Exhibit D. Documentation will be placed in escrow within ten (10) days of when the Software is placed in escrow.
- 5.2 Licensor shall deposit the Deposit Materials with Data Securities International Inc. ("DSI"), no later than forty five (45) days after the execution of any Schedule issued hereunder, if such Deposit Materials are not already in escrow with DSI. Licensor shall employ reasonable efforts to confirm that Amexco has received notice of any deposit pursuant to the terms of the attached escrow agreement. Licensor agrees to update the escrow at least every six (6) months. In addition to the periodic update in the preceding sentence, Licensor shall also use commercially reasonable efforts to update the escrow upon delivery of an Update (not including patches or other minor Updates) to Amexco pursuant to the support and maintenance provisions herein.
- 5.3 The release conditions triggering the notification and release provisions of the source code escrow agreement shall be:
  - a. Licensor's uncured, material breach of its maintenance or support obligations imposed on it pursuant to a license agreement between Licensor and Amexco provided that Amexco has paid all applicable fees for such maintenance and support; or
  - b. Licensor's failure to continue to do business in the ordinary course and its business is not continued by another corporation or entity; The institution of bankruptcy, receivership, insolvency, reorganization or other similar proceedings by or against Licensor under the Federal Bankruptcy Code, if such proceedings have not been dismissed or discharged within sixty (60) calendar days after they are instituted; the insolvency or making of an assignment for the benefit of creditors or the admittance of any involuntary debts as they mature by Licensor; or
  - c. Licensor materially breaches the Year 2000 Warranty as specified in Article 8 of this Agreement and fails to cure such breach pursuant to the support and maintenance provisions.

#### ARTICLE 6: MAINTENANCE

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ARTICLE 7: INVOICING; PAYMENT; DISCOUNTS

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#### ARTICLE 8: WARRANTIES

8.1 Licensor warrants to Amexco that: (i) Licensor has the right to furnish the Products, Documentation, and other materials and perform the Maintenance and other services as specified in this Agreement ("Product Materials and Services") covered hereunder free of all liens, claims, encumbrances and other restrictions; (ii) to the best of its knowledge, the Product Materials and Services furnished by Licensor and/or Amexco's use of the same hereunder do not violate or infringe the rights of any third party or the laws or regulations of any governmental or judicial authority; (iii) Amexco's use and possession of the Product Materials and Services and the license granted hereunder, shall not be adversely affected, interrupted or disturbed by Licensor (except as provided in the Agreement) or any entity asserting a claim under or through Licensor; (iv) Licensor has not knowingly and shall not knowingly insert any code which would have the affect of disabling or otherwise shutting down all or any portion of any Product licensed hereunder; (v) Licensor shall use its reasonable commercial efforts to ensure that no viruses or similar items are knowingly coded or introduced in any Product licensed hereunder; and (vi) that at the time this Agreement is executed, Licensor is not a party to any litigation that Licensor reasonably believes will adversely affect the rights granted to Amexco by Licensor hereunder.

8.2 Licensor warrants that the Software shall materially conform to the applicable Documentation, including but not limited to operating in conjunction with any third party software that is expressly referenced in the Documentation, for a period of one hundred and eighty (180) days, not including any Cure Period or Second Cure Period as defined herein, following delivery of the applicable Software, upon delivery to the Installation Site (the "Warranty Period"). If prior to the end of the Warranty Period, Amexco has not notified Licensor of the non-conformity of the Software, Licensor shall have met its warranty obligations under this Article 8.

8.2.1 If, during the Warranty Period, any Software fails to materially conform to the applicable Documentation and Amexco notifies Licensor in writing setting forth in reasonable detail the degree and nature of the non-conformity and reproducing the non-conformity. Licensor shall promptly review the claim by Amexco. If Licensor confirms that the reported non-conformity is a non-conformity to the

applicable Software Documentation and is not due to (i) modifications made to the Software by someone other than Licensor; (ii) combination of the Software with other product(s) where such other product(s) cause(s) the non-conformity; or (iii) negligence or misuse, then Licensor shall use commercially reasonable efforts to repair or replace the materially non-conforming Software and deliver to Amexco repaired or replacement Software that materially conforms to the applicable Documentation within the time period quoted by Licensor to Amexco (the "Cure Period"), or if no time period is quoted by Licensor, such time period shall in no event be longer than thirty (30) days following confirmation by Licensor of the non-conformity. The time elapsed during such Cure Period shall not count against the Warranty Period, and the Warranty Period shall recommence from the point in time where it was suspended, thirty (30) days from the time that Licensor delivers to Amexco the repaired or replaced Software. Unless Licensor receives a written notification from Amexco that the repaired or replaced Software does not materially conform to the applicable Documentation within thirty (30) business days following receipt of the repaired or replaced Software, Licensor shall have met its warranty obligation under this Article 8. Notwithstanding the foregoing and provided that Amexco has paid the appropriate Support and Maintenance Service fees pursuant to this Agreement or an applicable schedule, Licensor shall continue to support and maintain the accepted Software pursuant to the Support and Maintenance provisions herein.

8.2.2 If Licensor receives a written notification from Amexco within such thirty (30) business day period that a non-conformity continues to exist, the Warranty Period applicable to such Software shall be extended and Licensor shall continue to have the right to use commercially reasonable efforts to either repair/replace the materially nonconforming Software within the time period quoted by Licensor to Amexco, if no time period is quoted by Licensor, such time period shall in no event be longer than thirty (30) business days following confirmation by Licensor of the nonconformity (the "Second Cure Period"), whereupon the previous provisions for Licensor to fulfill or be deemed to have fulfilled its warranty obligations and the suspension of the Warranty Period shall apply. If Licensor is unable to repair/replace non-conformities of any Software subject to a Software warranty under this Article 8 after two (2) attempts to do so, then Amexco's remedy shall be as follows: Amexco shall be relieved of any obligation to pay the License Fee applicable to the materially nonconforming Software and shall receive a full refund for any fees already paid to Licensor, provided that upon the parties' mutual written agreement that the Software continues to not conform to the applicable Documentation after two (2) attempts to do so, Amexco immediately ceases further use of the applicable Software, destroys all copies of the applicable Software and certifies such destruction in writing to Licensor.

8.2.3 If Licensor does not confirm that the reported non-conformity is a non-conformity or if the non-conformity reported is due to (i) modifications made to the Software by someone other than Licensor, (ii) functions contained in Software operating in the combinations that may be selected for use by Amexco other than as stated in the Documentation, or (iii) negligence or misuse, then Licensor shall have no obligation to take any action as part of any Software warranty.

8.3 Other Exclusions. Licensor does not warrant and the Licensor warranties contained herein expressly do not provide or assure that:

- Use of Products shall meet Customer's requirements;
- Operation of Products shall be uninterrupted or error free.

8.4 Licensor warrants that: (i) during the Warranty Period, all media, if any, containing the Software that is delivered to Amexco shall be free from any defects in materials and workmanship and (ii) updates to the Documentation provided by Licensor hereunder shall be at a minimum, the level of and comprehensiveness reflected in the previous version of the Documentation.

8.5 Year 2000 Compliance and Warranty. Licensor warrants to Amexco that the Products provided hereunder have been fully tested and will accurately process all dates including, but not limited to, between the twentieth and twenty-first century in either direction, including leap years, when properly installed, properly used in accordance with the applicable Documentation, and unmodified by Amexco, provided all items used in combination with Products properly exchange unambiguous and year 2000 compliant date data. Without limiting the generality of the foregoing, Licensor warrants that all Software licensed from Licensor shall (a) manage and manipulate data involving all dates from the 20th and 21<sup>st</sup> centuries without functional or data abnormality related to such dates; and (b) manage and manipulate data involving all dates from the 20<sup>th</sup> and 21<sup>st</sup> centuries without inaccurate results related to such dates. At no additional cost to Amexco (beyond payment of the license fees), Licensor shall continue to support and maintain the Software so that it complies with the provisions of this warranty and any non-compliance will be addressed through the Support and Maintenance provisions of this Agreement at no additional charge and addressed as a Severity Level One error. Licensor shall have no warranty obligation for any nonconformance with the above warranty, which arises:

- i) out of a defect in any third party software, or other software or hardware product in use by Amexco not acquired from Licensor, which causes the Software not to conform to this warranty when used in combination with such other software or hardware product;
- ii) when Amexco has not installed the most recent Update of the Software, where use of such Update would avoid the nonconformance; or
- iii) when such nonconformance is caused, present or inherent in the data, database or native file system that the Software accesses, including, but not limited to, dates or date formats that do not reflect the century.

8.6 Licensor warrants to Amexco that Updates to the Software provided to Amexco hereunder shall not materially degrade, impair or otherwise materially adversely affect the essential functionality of the Software provided hereunder.

8.7 Licensor warrants that any Maintenance or other services provided by Licensor hereunder shall be performed in a good, workmanlike and professional manner by qualified personnel. Licensor personnel will observe and comply with Amexco's security procedures, rules,



regulations, policies, working hours and holiday schedules. In performing Maintenance services at Amexco locations, Licensor personnel will use reasonable commercial efforts to minimize any disruption to Amexco's normal business operations.

- 8.8 EXCEPT AS SPECIFICALLY PROVIDED IN THIS AGREEMENT, THERE ARE NO OTHER WARRANTIES, EXPRESSED OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, ANY IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.

#### ARTICLE 9: INTELLECTUAL PROPERTY INFRINGEMENT

- 9.1 Licensor agrees to defend and/or handle at its own expense, any claim or action against Amexco for actual or alleged infringement of any intellectual or industrial property right, including, without limitation, trademarks, service marks, United States or Canadian patents, copyrights, misappropriation of trade secrets or any similar proprietary rights (other than patents issued in foreign jurisdictions not expressly provided herein), based upon the Software furnished hereunder by Licensor or based on Amexco's use thereof in accordance with the applicable Documentation. Licensor further agrees to indemnify and hold Amexco harmless from and against any and all liabilities, losses, costs, damages finally awarded or settled and expenses (including reasonable attorneys' fees) associated with any such claim or action. Amexco may participate in the defense provided it pays its own costs associated with such participation.

- 9.2 Licensor shall have no liability under this Article 9 unless:

9.2.1 Amexco notifies Licensor in writing immediately after Amexco becomes aware of a claim or the possibility thereof and Licensor is unaware of such claim;

9.2.2 Licensor has sole control of the settlement, compromise, negotiation, and defense of any such action consistent with Amexco's rights hereunder unless otherwise mutually agreed to in writing and provided however that Licensor shall seek Amexco's consent prior to a settlement in which Amexco's rights, other than those addressed in this Section 9, are affected, or in which Amexco is otherwise obligated; and

Amexco cooperates, in good faith, in the defense of any such legal action.

- 9.3 Licensor shall have no liability for any claim of infringement based on (i) Software that has been modified by parties other than Licensor or parties acting as agents of Licensor; (ii) Amexco's use of the Software in conjunction with data where such data gave rise to the infringement claim; or (iii) Amexco's use of the Software with non-Licensor Software or hardware, where such other software or hardware gave rise to the infringement claim, and absent use of such hardware or software no claim would have been valid.
- 9.4 If any Product becomes, or in Licensor's opinion are likely to become, the subject of any such claim or action, then, Licensor, at its expense may either: (i) procure for Amexco the right to

continue using same as contemplated hereunder; (ii) modify same to render same non-infringing (provided such modification does not adversely affect Amexco's use as contemplated hereunder); (iii) replace same with equally suitable, functionally equivalent, compatible, non-infringing products, materials and/or services; or iv) if neither of the foregoing options is commercially reasonable, terminate the license for the Product. Upon such termination of the license upon Amexco's return Product, Licensor will refund to Amexco, as Amexco's sole remedy for such license termination, all License fees paid by Amexco for the terminated license, less an amount equal to one-sixtieth (1/60<sup>th</sup>) of the license fees for each month or any portion thereof which has elapsed since the Schedule Effective Date of such terminated license. THIS SECTION STATES THE ENTIRE LIABILITY OF LICENSOR WITH RESPECT TO ANY CLAIM OF INFRINGEMENT REGARDING THE PRODUCT.

#### ARTICLE 10: CONFIDENTIAL INFORMATION

- 10.1 Each party agrees to regard and preserve as confidential, all Confidential Information of the other which may be obtained from any source. In maintaining the confidentiality of Confidential Information hereunder, each party agrees it shall not, without first obtaining the written consent of the other, disclose or make available to any person, firm, or enterprise, reproduce or transmit, or use for its own benefit or the benefit of others, any such Confidential Information. Each party agrees that its own use and/or distribution of the other party's Confidential Information shall be limited to its own employees on a "need to know" basis; provided, however, that Amexco may also disclose Licensor's Confidential Information to employees of Amexco, its parent, subsidiary and affiliates, and to Permitted Contractors retained by Amexco for purposes specifically related to Amexco's use or evaluation of such Confidential Information, and who agree in writing to be bound by provisions no less restrictive than those herein. Neither party shall disassemble, decompile or otherwise reverse engineer any software product of the other party and, to the extent any such activity may be permitted, the results thereof shall be deemed Confidential Information subject to the requirements of this Agreement.
- 10.2 "Confidential Information" of Amexco shall include both specific information relating to the project or work effort which originated Amexco's desire to exchange information and the entering into of this Agreement or any Schedule issued hereunder, as well as all other information relating to the past, present and future plans, businesses, activities, customers and suppliers of Amexco, its parent, subsidiaries and affiliates which is obtained by Licensor in connection with the exchange of information contemplated hereunder. "Confidential Information" of Licensor shall include both specific information relating to the project or work effort for which Licensor's provision of products, software, or services may be provided to Amexco, as well as other information related to Licensor's past, present and future plans, businesses, activities, customers, suppliers, its subsidiaries and affiliates which is obtained by Amexco in connection with the exchange of information as contemplated hereunder. Without limiting the generality of the foregoing, Licensor's "Confidential Information" shall also include all information and materials disclosed to Amexco regarding Licensor's software products or software product development. In preserving the confidentiality of the disclosing party's Confidential Information, the receiving party shall not be required to take any greater steps than it takes to protect the confidentiality of its own similar information, but in no event shall such steps be less than reasonable.

10.3 Both parties acknowledge and agree information shall not be considered "Confidential Information" to the extent, but only to the extent, that such information: (a) is already known to the receiving party free of any confidentiality obligation at the time it is obtained from the other party; (b) is or becomes publicly known or available through no wrongful act of the receiving party; (c) is rightfully received from a third party without restriction; (d) is independently discovered or developed by the receiving party using individuals who have had no contact with the Confidential Information of the other party; or (e) is required to be disclosed in response to a valid order of a court or authorized agency of government, provided that notice is given promptly to the party whose Confidential Information is to be so disclosed so that such party may seek a protective order and/or engage in other efforts to minimize the required disclosure.

10.4 Each party further acknowledges and agrees that in the event of a breach or threatened breach by it of the provisions of this Confidentiality Agreement, the other party will have no adequate remedy in money or damages and accordingly shall be entitled to seek an injunction against such breach or threatened breach; provided, however, no specification in this Confidentiality Agreement of a specific legal or equitable remedy shall be construed as a waiver or prohibition of any legal or equitable remedies in the event of a breach or threatened breach of this Confidentiality Agreement.

10.5 Information that Licensor considers "Highly Confidential" (documents, notes, or other physical embodiments of or reflecting the Confidential Information) must be marked as such with appropriate notification to Amexco prior to deliver of the "Highly Confidential" information. Licensor may request the return of any information marked as "Highly Confidential" including any copies thereof that are in the possession or control of Amexco. Upon the request of Licensor, a project manager of Amexco shall verify, and provide to Licensor written certification of, the completeness of the delivery of such materials. Notwithstanding any of the foregoing, in the event of a breach by Amexco of the Confidentiality provisions herein, or Licensor's termination of a license issued to Amexco under the applicable schedule in accordance with the termination provisions herein, Licensor may request the return of any Software Tools and related documentation including any copies thereof that are in the possession or control of Amexco regardless of whether such Software Tools or related documentation are designated as "Highly Confidential".

#### ARTICLE 11: LIMITATION OF LIABILITY

IN NO EVENT SHALL EITHER PARTY BE LIABLE, ONE TO THE OTHER, FOR ANY INDIRECT, SPECIAL, EXEMPLARY, PUNITIVE OR CONSEQUENTIAL DAMAGES ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT.

IN ADDITION TO THE FOREGOING, EXCEPT FOR LICENSOR'S LIABILITY ARISING FROM (I) ITS GROSS NEGLIGENCE WHILE PERFORMING ANY SERVICES HEREUNDER; (II) DEATH, BODILY INJURY OR TANGIBLE PROPERTY DAMAGE CAUSED BY LICENSOR WHILE PERFORMING SERVICES HEREUNDER; (III) INDEMNIFICATION OBLIGATIONS, UNDER ARTICLE 9 OF THIS AGREEMENT; (IV) LICENSOR'S FAILURE TO MEET ANY OF ITS OBLIGATIONS RELATING TO CONFIDENTIAL INFORMATION UNDER ARTICLE 10 OF THIS AGREEMENT; AND/OR (V) ANY WILLFUL MISCONDUCT

OR MALICIOUS ACTS, THE LIMIT OF LICENSOR'S LIABILITY (IN TORT (INCLUDING CLAIMS OF NEGLIGENCE) OR BY STATUTE OR OTHERWISE) TO AMEXCO FOR DIRECT DAMAGES CONCERNING PERFORMANCE OR NON-PERFORMANCE, OR OTHERWISE, BY LICENSOR IN ANY MANNER RELATED TO THIS AGREEMENT OR ANY APPLICABLE SCHEDULE, FOR ANY AND ALL CLAIMS SHALL NOT, IN THE AGGREGATE, EXCEED THE TOTAL FEES PAID BY AMEXCO TO LICENSOR UNDER THE APPLICABLE SCHEDULE FOR THE SOFTWARE OR SERVICES THAT GAVE RISE TO SUCH LIABILITY.

## 12. GENERAL

12.1 **TERM:** This Agreement shall commence as of the Effective Date and continue thereafter unless terminated as provided hereunder. Each Schedule shall become binding when duly executed by both parties and shall continue thereafter unless terminated as permitted hereunder. Notice of termination of any Schedule shall not be considered notice of termination of this Agreement.

12.2 **TERMINATION:** In the event of any material breach of this Agreement by one party, the other party may (reserving cumulatively all other remedies and rights under this Agreement and at law and in equity) terminate the Schedule(s) involved, in whole or in part, by giving thirty (30) days' written notice thereof; provided, however, that any such termination shall not be effective if the party in breach has cured the breach of which it has been notified in writing prior to the expiration of said thirty (30) days. In the event of any termination by Amexco in accordance with this provision, Amexco shall, effective as of the date of such termination, have a perpetual license to use the Product, Documentation and any other items provided hereunder without further charge or fee (upon full payment of all fees due under the Schedule), but otherwise subject to and in accordance with all the provisions of this Agreement.

In addition to the foregoing, Amexco shall have the right to terminate this Agreement and/or any applicable Schedule(s), by giving ninety (90) days written notice to Licensor. Except for the case of termination by Amexco due to Licensor's material breach of this agreement (as described above), upon termination of this Agreement and/or any Schedule or license hereunder, Amexco's rights to the affected Software shall cease. Amexco shall immediately stop using such Software and shall return such Software to Licensor, or destroy all copies thereof. In addition, Amexco shall provide Licensor with notarized, written certification signed by an officer of Amexco, that all copies of the Software have been returned or destroyed and that no copies have been retained by Amexco for any purpose whatsoever.

Termination of this Agreement or any license created hereunder shall not limit either party from pursuing other remedies available to it, including injunctive relief, nor shall such termination relieve Amexco's obligation to pay all fees that have accrued and are due or are otherwise owed by Amexco under any Schedule or exhibit.

12.3 **TAXES:** Amexco agrees to pay all taxes levied against or upon the Products and any services or their use hereunder, exclusive, however, of taxes based on Licensor's income, which taxes shall be paid by Licensor. If Licensor pays any tax for which Amexco is

responsible hereunder, Amexco will reimburse Licensor upon Amexco's receipt of written proof of payment.

- 12.4 **EXCUSABLE DELAYS:** In no event shall either party be liable to the other for any delay or failure to perform due to cause or causes beyond the reasonable control and without the fault or negligence of the party claiming excusable delay. Such causes shall include, but are not limited to, acts of God, floods, fires, loss of electricity or other utilities.
- 12.5 **NOTICES:** Unless otherwise specified all notices shall be in writing and delivered personally or mailed, first class mail, postage prepaid, to the addresses of the parties set forth at the beginning of this Agreement, to the attention of the undersigned; provided, however, that a copy of any Licensor notice of material breach to Amexco shall also be sent to the Office of the General Counsel Technology Law Group, World Financial Center, American Express Tower, 200 Vesey Street, 49th floor, New York, New York 10285-4900. A copy of any Amexco notice of material breach to Licensor shall also be sent to the Office of the General Counsel, 6034 West Courtyard Drive, Austin, TX 78735. As to any Schedule, notices shall also be sent to the signatories of the Schedule involved. Either party may change the address(es) or addressee(s) for notice hereunder upon written notice to the other. All notices shall be deemed given on the date delivered or when placed in the mail as specified herein.
- 12.6 **ADVERTISING OR PUBLICITY:** Except as set forth in any Schedule, neither party shall use the name or marks, refer to or identify the other party in advertising or publicity releases, promotional or marketing correspondence to others without first securing the written consent of such other party's authorized representative.
- 12.7 **ASSIGNMENT:** Neither party may assign this Agreement, any Schedule and/or any rights and/or obligations hereunder without the written consent of the other party, such consent not to be unreasonably withheld, and any such attempted assignment shall be void. Notwithstanding the foregoing, Amexco may assign this Agreement, any Schedule and/or any of its rights and/or obligations hereunder (including all licenses granted to Amexco hereunder) to any Amexco Entity.
- 12.8 **GOVERNING LAW:** In all respects this Agreement shall be governed by the substantive laws of the State of New York without regard to conflict of law principles.
- 12.9 **MODIFICATION, AMENDMENT, SUPPLEMENT AND WAIVER:** No modification, course of conduct, amendment, supplement to or waiver of this Agreement, any Schedule, or any provisions hereof shall be binding upon the parties unless made in writing and duly signed by both parties. At no time shall any failure or delay by either party in enforcing any provisions, exercising any option, or requiring performance of any provisions, be construed to be a waiver of same.
- 12.10 **SEVERABILITY:** If any of the provisions of this Agreement are held invalid, illegal or unenforceable, the remaining provisions shall be unimpaired.
- 12.11 **HEADINGS:** Headings are for reference and shall not affect the meaning of any of the provisions of this Agreement.

12.12 ENTIRE AGREEMENT: The Exhibits, Schedules and attachments to this Agreement are incorporated by this reference and shall constitute part of this Agreement. This Agreement constitutes the entire agreement between the parties and supersedes all previous agreements, promises, proposals, representations, understandings and negotiations, whether written or oral, between the parties respecting the subject matter hereof.

IN WITNESS WHEREOF, the parties hereto have duly executed this Agreement as of the day, month and year first written above.

American Express Financial Corporation

By: 

Name: \_\_\_\_\_

(Type or Print)

Title: \_\_\_\_\_

Date: \_\_\_\_\_

Trilogy Software, Inc.

By: 

Name: Karel A. Jones

(Type or Print)

Title: Associate General Counsel

Date: 10-26-99

# **EXHIBIT B**

Electronically Served  
1/30/2013 5:38:57 PM  
Hennepin County Civil, MN

STATE OF MINNESOTA  
COUNTY OF HENNEPIN

DISTRICT COURT  
FOURTH JUDICIAL DISTRICT  
Case Type: Contract

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AMERIPRISE FINANCIAL, INC.,

File No. 27-CV-13-211  
Judge Marilyn Brown Rosenbaum

Plaintiff,

**PLAINTIFF'S NOTICE OF TAKING  
DEPOSITION OF DEFENDANT**

v.

VERSATA SOFTWARE, INC.,

Defendant.

---

TO: Defendants and their attorneys Sam Hanson, Esq., Briggs and Morgan, P.A., 2200 IDS Center, 80 South Eighth Street, Minneapolis, MN 55402 and Mr. Steven J. Mitby, Ahmad, Zavitsanos, Anaipakos, Alavi, & Mensing, 3460 One Houston Center, 1221 McKinney Street, Houston, TX 77010-2009:

**PLEASE TAKE NOTICE** that Plaintiff Ameriprise Financial, Inc. will take the deposition upon oral examination pursuant to Minn. R. Civ. P. 30.02(f) of the person(s) designated to testify on behalf of Defendant Versata Software, Inc. regarding the topics listed below at the offices of Dorsey & Whitney LLP, 50 South Sixth Street, Suite 1500, on March 10, 2013, at 9:00 a.m., and continuing until completed. The deposition will be taken before and transcribed by a notary public or other officer qualified by the law to administer oaths and will be recorded stenographically and by videotape (sound and visual).

**DEFINITIONS AND INSTRUCTIONS**

This notice is to be responded to with reference to the following definitions and instructions:

1. **"Agreement"** means the October 4, 1999 Master License Agreement between Ameriprise and Versata.

**EXHIBIT B**



Electronically Served  
1/30/2013 5:38:57 PM  
Hennepin County Civil, MN

2. “Ameriprise” means Plaintiff, Ameriprise Financial, Inc. and its predecessors and its and their current and former affiliates and subsidiaries.

3. “DCM” means the software product known as Distribution Channel Management and licensed at any time to Ameriprise.

4. “License” means any written, oral or other agreement or arrangement, formal or informal, between Versata Software, Inc. and another entity or individual.

5. “Versata” means Defendant, Versata Software, Inc., and any current and former parent, subsidiary or affiliate of Versata Software, Inc., including, without limitation, Trilogy Software, Inc., Versata Development Group, Inc., and Trilogy Development Group, Inc.

Defendant shall designate a representative knowledgeable on these topics:

**TOPICS FOR DEPOSITION**

1. A description of all code and documentation that Versata has escrowed pursuant to the Agreement for the benefit of Ameriprise.

2. All licenses covering, or relating to, DCM code or components of DCM.

3. The genesis of the code included in DCM.

4. Versata’s DCM development, maintenance, and support staffing models and processes, including, without limitation, any efforts to maintain quality and confidentiality of code in DCM.

5. The structure, features, and functions of DCM, including the relationships of class files to other class files and the relationship of stock DCM code to custom code.

6. Key class files, including those class files essential to operate DCM.

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1/30/2013 5:38:57 PM  
Hennepin County Civil, MN

DORSEY & WHITNEY LLP

Dated: January 30, 2013

By s/ Peter M. Lancaster  
Peter M. Lancaster #0159840  
Heather D. Redmond #0313233  
Andrea Caron Wilttrout #0391768  
Kristin K. Zinsmaster #0391299  
Suite 1500, 50 South Sixth Street  
Minneapolis, MN 55402-1498  
Telephone: (612) 340-2600

**Attorneys for Plaintiff Ameriprise Financial,  
Inc.**

**ACKNOWLEDGMENT**

The undersigned hereby acknowledges that sanctions may be imposed under  
Minn. Stat. § 549.211.

DORSEY & WHITNEY LLP

s/ Peter M. Lancaster

# **EXHIBIT C**

**CAUSE NO. D-1-GN-12-003588**

VERSATA SOFTWARE, INC., F/K/A	§	IN THE DISTRICT COURT
TRILOGY SOFTWARE, INC., AND	§	
VERSATA DEVELOPMENT GROUP,	§	
INC., F/K/A TRILOGY DEVELOPMENT	§	
GROUP, INC.,	§	
	§	
PLAINTIFFS	§	
	§	
V.	§	OF TRAVIS COUNTY, TEXAS
	§	
AMERIPRISE FINANCIAL, INC.,	§	
AMERIPRISE FINANCIAL SERVICES,	§	
INC., AMERICAN ENTERPRISE	§	
INVESTMENT SERVICES, INC.,	§	
	§	
DEFENDANTS	§	53 <sup>RD</sup> JUDICIAL DISTRICT

**PLAINTIFFS' OBJECTIONS AND ANSWERS TO**  
**DEFENDANTS' FIRST SET OF INTERROGATORIES**

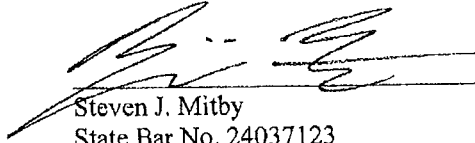
TO: Plaintiff, Ameriprise Financial, Inc., by and through its attorneys of record, Peter M. Lancaster, Heather D. Redmond, Andrea Caron Wilttrout, and Kristin K. Zinsmaster; Dorsey & Whitney LLP; 50 South Sixth Street, Suite 1500; Minneapolis, Minnesota 55402-1498.

Pursuant to the Texas Rules of Civil Procedure, Plaintiffs Versata Software, Inc. and Versata Development Group, Inc., respond to Defendants' First Set of Interrogatories.

**EXHIBIT C**

Respectfully Submitted,

AHMAD ZAVITSANOS ANAIPAKOS,  
ALAVI, MENSING, P.C.



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State Bar No. 24037123  
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Benjamin F. Foster  
State Bar. No. 24080898  
[bfoster@azalaw.com](mailto:bfoster@azalaw.com)  
Megan Bibb  
State Bar No. 24073924  
[mbibb@azalaw.com](mailto:mbibb@azalaw.com)  
1221 McKinney Street, Suite 3460  
Houston, Texas 77010  
Telephone: (713) 655-1101  
Facsimile: (713) 655-0062

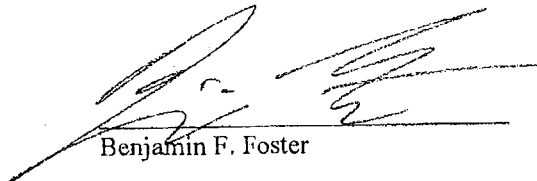
**CERTIFICATE OF SERVICE**

I certify that I served a true and correct copy of the foregoing document upon the following counsel by U.S. mail on March 15, 2013:

G. Alan Waldrop  
John R. Nelson  
Locke Lord LLP  
100 Congress Avenue, Suite 300  
Austin, Texas 78701  
(512) 305-4700 (Telephone)  
(512) 305-4800 (Facsimile)  
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[jnelson@lockelord.com](mailto:jnelson@lockelord.com)

Peter M. Lancaster  
Heather D. Redmond  
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Travis Barton  
McGinnis, Lochridge & Kilgore, LLP  
600 Congress Avenue, Suite 2100  
Austin, Texas 78701  
(512) 495-6000 (Telephone)  
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[tbarton@mcginnislaw.com](mailto:tbarton@mcginnislaw.com)



Benjamin F. Foster

**OBJECTIONS AND ANSWERS TO FIRST SET OF INTERROGATORIES**

1. Substantiate all occasions on which Versata instructed Ameriprise or Infosys not to decompile files.

**ANSWER:**

Plaintiff objects on the grounds that this interrogatory is overbroad and unduly burdensome; impermissibly requires Versata to marshal its evidence through the use of the word "all"; and is not reasonably calculated to lead to the discovery of admissible evidence in that Versata had no obligation to "instruct" Ameriprise regarding obligations that were explicitly stated in the 1999 Master License Agreement that Ameriprise executed with Versata.

Subject to and without waiving the forgoing objections, Versata responds as follows: Versata has repeatedly instructed both Ameriprise and Infosys that de-compilation is not permitted. By way of example, and without limitation, Section 10.1 of the 1999 Master License Agreement between Versata and Ameriprise specifically prohibits decompilation, copying, or reverse-engineering. Other parts of the MLA also prohibit Ameriprise from misusing of Versata's confidential information (e.g., Section 10.1) and from using competitors like Infosys as contractors on Versata software (e.g., Section 4.8). In addition, the MLA contains strict anti-waiver provisions (e.g., Section 12.9).

Versata reiterated its instruction that decompilation is impermissible in correspondence, including, for example, an August 2, 2010 email and August 19, 2010 letter from Hemant Shah to Ryan Macomb and subsequent correspondence between Versata and Ameriprise. Versata also had multiple discussions with Ameriprise in 2010, 2011, and 2012 in which Versata representatives continued to reiterate this instruction. In addition, Versata also sued Infosys in 2010 for decompiling software files and has reiterated its objections to decompilation in multiple public court filings.

Versata reserves the right to supplement this response as it continues to marshal its evidence, investigate its claims, and conduct discovery.

2. Substantiate any alleged occasions that DCM files at Ameriprise have been decompiled, including without limitation the dates, circumstances, and identities of persons involved.

**ANSWER:**

Plaintiff objects on the grounds that this interrogatory is overbroad and unduly burdensome; and impermissibly requires Versata to marshal its evidence through the use of the word "any." Plaintiff further objects on the grounds that the information responsive to this request for production is governed by the protective order in place in *Versata Software et al v. Infosys Technologies LTD.*,

Case No. 1:10-cv-00792 pending in the Western District of Texas Austin Division, which restricts Versata's ability to produce information to Ameriprise in this litigation.

Subject to and without waiving the foregoing, Versata responds as follows: Through its litigation with Infosys Versata has uncovered significant evidence of DCM decompilation. Specifically, on October 25, 2012, in response to discovery, Infosys identified approximately 99 discrete instances of decompilation in a spreadsheet. This spreadsheet will be produced once Ameriprise, Infosys and Versata reach terms on a protective order permitting the production of Infosys Attorney's Eyes Only materials to Ameriprise in this litigation. On that same date, Infosys also separately identified the 5,000 decompiled Versata DCM files that, at the time, Infosys claimed were stored on a laptop in Bangalore. Versata recently learned that these files are actually on an Infosys server in India to which Versata believes that multiple Infosys personnel have had access.

Versata reserves the right to supplement this response as it continues to marshal its evidence, investigate its claims, and conduct discovery.

3. Identify all competitors of Versata with respect to the development of enterprise compensation or configuration software since January 1, 2007, including without limitation identification of the specific software product that makes such entity a competitor.

**ANSWER:**

Plaintiff objects on the grounds that this interrogatory is overbroad and unduly burdensome. Plaintiff further objects that to the extent this interrogatory seeks information regarding entities not utilized by Ameriprise such information is not relevant, and is not reasonable calculated to lead to the discovery of relevant information and is therefore outside the scope of discovery.

Subject to and without waiving the foregoing, Versata answers as follows: Infosys which owns MacCamish Systems is a competitor of Versata in the development of compensation and configuration software because MacCamish develops and sells enterprise compensation and configuration software (including its PMACS product) that competes directly with Versata. TCS is also a competitor of Versata because TCS develops and sells enterprise compensation and configuration software (including its BANCS product) that competes directly with Versata. Versata has many other competitors in the enterprise compensation and configuration software space, but has limited its answer to the two competitors that Ameriprise has admitted to giving access to Versata's software in violation of the Master License Agreement.

Versata reserves the right to supplement this response as it continues to marshal its evidence, investigate its claims, and conduct discovery.

4. Substantiate any claim that Infosys, TCS, or any other third party providing services relating to Ameriprise's DCM is a competitor of Versata with respect to the development

of enterprise compensation or configuration software, including without limitation identification of the specific competing software product or service and any occasion on which Versata has lost revenues as a result of such alleged competitor.

**ANSWER:**

Plaintiff objects on the grounds that this interrogatory is overbroad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence. Subject to and without waiving these objections, relevant information is provided in response to Interrogatory No. 3 above.

Versata reserves the right to supplement this response as it continues to marshal its evidence, investigate its claims, and conduct discovery.

5. Substantiate all efforts you have made since January 1, 2007 to maintain confidentiality of DCM code.

**ANSWER:**

Plaintiff objects on the grounds that this interrogatory is overbroad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence. These objections specifically include, but are not limited to, defendants use of the word "all" as unduly burdensome, requires plaintiff to marshal all its evidence and is beyond the scope of discovery.

Subject to and without waiving the foregoing Versata answers as follows: The efforts Versata has undertaken to protect the confidentiality of DCM source code include, by way of example and not limitation, the following: (1) requiring confidentiality agreements with customers that contain similar requirements to the ones in the MLA, including prohibitions on decompilation, copying, reverse-engineering, or disclosure to competitors; (2) requiring confidentiality agreements with employees and contractors; (3) limiting access to DCM source code to employees and contractors who work on source code; (4) storing source code on secure servers; (5) denying customers and competitors access to source code; (6) requiring customers to grant Versata audit rights; (7) engaging in litigation against Infosys to enforce Versata's policy against decompilation.

Versata reserves the right to supplement this response as it continues to marshal its evidence, investigate its claims, and conduct discovery.

6. Substantiate any damage caused by Ameriprise's alleged breach of the Agreement, including without limitation any damage claimed in connection with any decompilation.

**ANSWER:**



Plaintiff objects on the grounds that this interrogatory is overbroad and unduly burdensome. Furthermore as discovery in this case is just beginning and Plaintiff reserves the right to supplement this response.

Subject to and without waiving the foregoing objections Versata answers as follows: Ameriprise's breach of the MLA has caused multiple categories of damages to Versata, including, by way of example and without limitation, the following: (1) Unjust enrichment from Ameriprise's wrongful use of the DCM software after Versata terminated the MLA, including all of the economic gain to Ameriprise by such use; (2) Partial or total destruction of the value of the Versata's DCM software, trade secrets, and confidential information; (3) lost profits based on Versata's loss of consulting and other DCM-related work to Infosys; and (4) in the alternative, licensing fees and reasonable royalties for Ameriprise's continued use of DCM after termination.

Versata reserves the right to supplement this response as it continues to marshal its evidence, investigate its claims, and conduct discovery.

7. Identify all third-party licensors of any components of DCM.

**ANSWER:**

Plaintiff objects on the grounds that this interrogatory is overbroad and unduly burdensome. Plaintiff further objects that to the extent this interrogatory seeks information which is not relevant, and is not reasonable calculated to lead to the discovery of relevant information and is therefore outside the scope of discovery.

8. Identify all licensees of DCM.

**ANSWER:**

Plaintiff objects on the grounds that this interrogatory is overbroad and unduly burdensome. Plaintiff further objects that to the extent this interrogatory seeks information which is not relevant, and is not reasonable calculated to lead to the discovery of relevant information and is therefore outside the scope of discovery.

9. Identify all legal proceedings, pending at any time since January 1, 2005, involving intellectual property claims or claims relating to DCM in which you have been a party.

**ANSWER:**

Plaintiff answers as follows:

- This lawsuit.

- Ameriprise Financial, Inc., V. Versata Software, Inc., Court File No. 27-cv-13-211 Filed by Ameriprise Financial in Minnesota. Stayed by the Minnesota Court.
- Versata Software et al v. Infosys Technologies LTD., Case No. 1:10-cv-00792 pending in the Western District of Texas Austin Division.

10. Identify all Versata employees since January 1, 2007.

**ANSWER:**

Plaintiff objects on the grounds that this interrogatory is overbroad and unduly burdensome. Plaintiff further objects that to the extent this interrogatory seeks information which is not relevant, and is not reasonable calculated to lead to the discovery of relevant information and is therefore outside the scope of discovery.

11. Identify all persons with access to DCM source code since January 1, 2007.

**ANSWER:**

Plaintiff objects on the grounds that this interrogatory is overbroad and unduly burdensome. Plaintiff further objects that to the extent this interrogatory seeks information which is not relevant, and is not reasonable calculated to lead to the discovery of relevant information and is therefore outside the scope of discovery.

12. Identify all patents you own relating in whole or in part to DCM.

**ANSWER:**

Plaintiff objects on the grounds that this interrogatory is overbroad and unduly burdensome. Plaintiff further objects that to the extent this interrogatory seeks information which is not relevant, and is not reasonable calculated to lead to the discovery of relevant information and is therefore outside the scope of discovery. Finally Plaintiff objects that this interrogatory is impermissibly vague. It is not clear what Ameriprise means by patents "relating to" DCM.

13. Identify the dates and circumstances relating to (a) the occasion on which You first learned that decompilation of DCM code had occurred with respect to Ameriprise's DCM and (b) the occasion on which you first objected to decompilation of DCM code with respect to Ameriprise's DCM.

**ANSWER:**

Plaintiff objects on the grounds that this interrogatory is overbroad and unduly burdensome.

Subject to and without waiving the forgoing defendant answers as follows:

Versata management first learned of decompilation on or around July 30, 2010. Versata objected immediately thereafter, including in an August 2, 2010 email and August 19, 2010 letter from Hemant Shah to Ryan Macomb.

4828-4370-0755, v. 2

# **EXHIBIT D**

CAUSE NO. D-1-GN-12-003588

VERSATA SOFTWARE, INC., F/K/A	§	IN THE DISTRICT COURT
TRILOGY SOFTWARE, INC., AND	§	
VERSATA DEVELOPMENT GROUP,	§	
INC., F/K/A TRILOGY DEVELOPMENT	§	
GROUP, INC.,	§	
	§	
PLAINTIFFS	§	
	§	
V.	§	OF TRAVIS COUNTY, TEXAS
	§	
AMERIPRISE FINANCIAL, INC.,	§	
AMERIPRISE FINANCIAL SERVICES,	§	
INC., AMERICAN ENTERPRISE	§	
INVESTMENT SERVICES, INC.,	§	
	§	
DEFENDANTS	§	53 <sup>RD</sup> JUDICIAL DISTRICT

**PLAINTIFFS' OBJECTIONS AND ANSWERS TO**  
**DEFENDANTS' FIRST REQUEST FOR PRODUCTION OF DOCUMENTS**

TO: Plaintiff, Ameriprise Financial, Inc., by and through its attorneys of record, Peter M. Lancaster, Heather D. Redmond, Andrea Caron Wiltrout, and Kristin K. Zinsmaster; Dorsey & Whitney LLP; 50 South Sixth Street, Suite 1500; Minneapolis, Minnesota 55402-1498.

Pursuant to the Texas Rules of Civil Procedure, Plaintiffs Versata Software, Inc. and Versata Development Group, Inc., respond to Defendants' First Set of Requests for Production of Documents.

**EXHIBIT D**

Respectfully Submitted,

AHMAD ZAVITSANOS ANAIPAKOS,  
ALAVI, MENSING, P.C.



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1221 McKinney Street, Suite 3460  
Houston, Texas 77010  
Telephone: (713) 655-1101  
Facsimile: (713) 655-0062

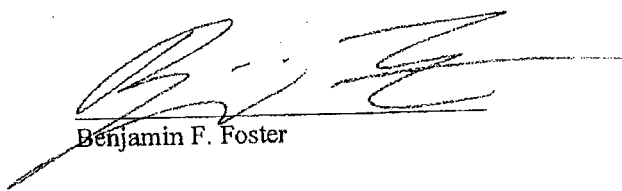
**CERTIFICATE OF SERVICE**

I certify that I served a true and correct copy of the foregoing document upon the following counsel by U.S. mail on March 15, 2013:

G. Alan Waldrop  
John R. Nelson  
Locke Lord LLP  
100 Congress Avenue, Suite 300  
Austin, Texas 78701  
(512) 305-4700 (Telephone)  
(512) 305-4800 (Facsimile)  
[awaldrop@lockelord.com](mailto:awaldrop@lockelord.com)  
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Peter M. Lancaster  
Heather D. Redmond  
Dorsey & Whitney LLP  
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Minneapolis, Minnesota 55402-1498  
(612) 340-2600 (Telephone)  
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Travis Barton  
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(512) 495-6000 (Telephone)  
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[tcbarton@mcginnislaw.com](mailto:tcbarton@mcginnislaw.com)



Benjamin F. Foster

**OBJECTIONS AND RESPONSES TO  
REQUESTS FOR PRODUCTION OF DOCUMENTS**

1. All documents identified in Defendant's responses to Plaintiff's interrogatories.

**RESPONSE:**

Plaintiff will produce non-privileged responsive documents and supplement as needed.

2. All documents relating to decompilation of Ameriprise DCM code by anyone other than You.

**RESPONSE:**

Plaintiff objects to the phrase "Ameriprise DCM code" as vague and ambiguous.

Subject to and without waiving the forgoing, and construing "Ameriprise DCM code" to mean the object code for DCM residing on Ameriprise's servers. Plaintiff will produce non-privileged documents once a valid protective order is in place in this case and once Infosys, Ameriprise and Versata have come to terms on a mechanism for producing documents governed by the Infosys Versata protective order to Ameriprise. In fact, Plaintiff has responsive documents ready for immediate production once Ameriprise agrees to a protective order. Plaintiff reserves the right to supplement as needed.

3. All documents constituting or relating to Versata instructions not to decompile DCM code.

**RESPONSE:**

Plaintiff objects to this request as overly broad and unduly burdensome. Furthermore Plaintiff objects that this request seeks irrelevant information which is not reasonably calculated to lead to the discovery of admissible evidence and is therefore outside the scope of discovery.

Subject to and without waiving the forgoing plaintiff answers as follows: Plaintiff will produce non-privileged documents relating to Versata's instruction not to decompile directed at Ameriprise or contractors working at or for Ameriprise. In fact, Plaintiff has responsive documents ready for immediate production once Ameriprise agrees to a protective order. Plaintiff reserves the right to supplement as needed.

4. All documents constituting or relating to any Versata communication that refers or relates to any entity being a competitor to Versata in the development of enterprise compensation or configuration software.

**RESPONSE:**

Plaintiff objects to this request as overly broad and unduly burdensome. Furthermore Plaintiff objects that this request seeks irrelevant information which is not reasonably calculated to lead to the discovery of admissible evidence and is therefore outside the scope of discovery.

Subject to and without waiving the forgoing plaintiff answers as follows: Plaintiff will produce communications to Ameriprise identifying competitors and will produce internal non-privileged Versata communications, if any, identifying competitors. In fact, Plaintiff has responsive documents ready for immediate production once Ameriprise agrees to a protective order. Plaintiff reserves the right to supplement as needed.

5. All documents, including but not limited to calendar entries, agenda, presentations, or other materials, relating to or used in any training of Infosys personnel or consultants to conduct work on DCM for Versata licensees, including but not limited to Ameriprise.

**RESPONSE:**

Plaintiff objects to this request as overly broad and unduly burdensome. Furthermore Plaintiff objects that this request seeks irrelevant information which is not reasonably calculated to lead to the discovery of admissible evidence and is therefore outside the scope of discovery. In fact, Plaintiff has responsive documents ready for immediate production once Ameriprise agrees to a protective order.

Subject to and without waiving the forgoing plaintiff answers as follows: Plaintiff will produce non-privileged responsive documents and supplement as needed.

6. Copies of all screen shots taken by Versata of the Ameriprise CVS.

**RESPONSE:**

Plaintiff will produce non-privileged responsive documents and supplement as needed.

7. All documents designated as exhibits in depositions in the Infosys Litigation.



**RESPONSE:**

Plaintiff will produce these documents once a valid protective order is in place in this case and once Infosys, Ameriprise and Versata have come to terms on a mechanism for producing documents governed by the Infosys Versata protective order to Ameriprise.

8. All discovery responses served in the Infosys Litigation.

**RESPONSE:**

Plaintiff will produce these documents once a valid protective order is in place in this case and once Infosys, Ameriprise and Versata have come to terms on a mechanism for producing documents governed by the Infosys Versata protective order to Ameriprise. In fact, Plaintiff has responsive documents ready for immediate production once Ameriprise agrees to a protective order.

9. All documents relating to Ameriprise produced by Infosys in the Infosys Litigation.

**RESPONSE:**

Plaintiff will produce these documents once a valid protective order is in place in this case and once Infosys, Ameriprise and Versata have come to terms on a mechanism for producing documents governed by the Infosys Versata protective order to Ameriprise.

10. All documents relating to Ameriprise produced by Versata in the Infosys Litigation.

**RESPONSE:**

Plaintiff will produce these documents once a valid protective order is in place in this case and once Infosys, Ameriprise and Versata have come to terms on a mechanism for producing documents governed by the Infosys Versata protective order to Ameriprise. In fact, Plaintiff has responsive documents ready for immediate production once Ameriprise agrees to a protective order.

11. All documents filed with the Court by any party in the Infosys Litigation.

**RESPONSE:**

Plaintiff object that the information sought is obtainable from some other source that is more convenient, less burdensome, or less expensive. The only exception to the forgoing objections is for documents filed under seal in the Infosys Litigation. Plaintiff will produce these documents once a valid protective order is in place in this case and once Infosys, Ameriprise

and Versata have come to terms on a mechanism for producing documents governed by the Infosys Versata protective order to Ameriprise. In fact, Plaintiff has responsive documents ready for immediate production once Ameriprise agrees to a protective order.

12. All documents constituting or relating to complaints to Versata about software or service issues (other than standard problem logs) by other customers of DCM software, including without limitation, to the extent applicable, Waddell & Reed, Mass Mutual Life Insurance Company, MetLife, Pacific Life, and Penn Mutual.

**RESPONSE:**

Plaintiff objects to this request as overly broad and unduly burdensome. Furthermore Plaintiff objects that this request seeks irrelevant information and is not reasonably calculated to lead to the discovery of admissible evidence and is therefore outside the scope of discovery. Plaintiff further objects to this request because it would require the disclosure of sensitive, confidential, and/or proprietary business information.

13. All licenses covering or relating to DCM code or components of DCM code effective at any time after October 1999.

**RESPONSE:**

Plaintiff objects to this request as overly broad and unduly burdensome. Furthermore Plaintiff objects that this request seeks irrelevant information and is not reasonably calculated to lead to the discovery of admissible evidence. Plaintiff further objects to this request because it would require the disclosure of sensitive, confidential, and/or proprietary business information.

14. All internal reviews, evaluations, reports, or other analyses of work performed by Versata at Ameriprise.

**RESPONSE:**

Plaintiff objects to this request as overly broad and unduly burdensome. Furthermore Plaintiff objects that this request seeks irrelevant information and is not reasonably calculated to lead to the discovery of admissible evidence.

15. All documents relating to security measures taken to protect the confidentiality of DCM code.

**RESPONSE:**

Plaintiff objects to this request as overly broad and unduly burdensome. Furthermore Plaintiff objects that this request seeks irrelevant information and is not reasonably calculated to lead to the discovery of admissible evidence. Plaintiff further objects to the phrase "DCM code" as vague and ambiguous since it is not clear if Ameriprise means DCM object code or DCM source code. Plaintiff has construed this phrase to mean object code for DCM residing on Ameriprise's servers

Subject to and without waiving the forgoing plaintiff answers as follows: Plaintiff will produce non-privileged responsive documents and supplement as needed.

16. A copy of the source code for the version of DCM currently licensed to

Ameriprise.

**RESPONSE:**

Plaintiff objects to this request as overly broad and unduly burdensome. Furthermore Plaintiff objects that this request seeks irrelevant information and is not reasonably calculated to lead to the discovery of admissible evidence. Plaintiff further objects to this request because it would require the disclosure of sensitive, confidential, proprietary and/or trade secret information.

17. All documents constituting or relating to business plans, strategies, or projections referencing or relating to Ameriprise.

**RESPONSE:**

Plaintiff objects to this request as overly broad and unduly burdensome. Furthermore Plaintiff objects that this request seeks irrelevant information and is not reasonably calculated to lead to the discovery of admissible evidence. Plaintiff further objects to this request because it would require the disclosure of sensitive, confidential, and/or proprietary business information.

18. All documents relating to Versata's efforts to sell to Ameriprise Versata's DCM Enterprise Cloud.

**RESPONSE:**

Plaintiff objects to this request as overly broad and unduly burdensome. Furthermore Plaintiff objects that this request seeks irrelevant information and is not reasonably calculated to lead to the discovery of admissible evidence.

19. Copies of all annual financial statements, audited if available, for Versata since January 1, 2007.

**RESPONSE:**

Plaintiff objects to this request as overly broad and unduly burdensome. Furthermore Plaintiff objects that this request seeks irrelevant information and is not reasonably calculated to lead to the discovery of admissible evidence. Plaintiff further objects to this request because it would require the disclosure of sensitive, confidential, and/or proprietary business information.

20. Documents sufficient to demonstrate Versata's revenues, costs, and margins on DCM licenses since January 1, 2007.

**RESPONSE:**

Plaintiff objects to this request as overly broad and unduly burdensome. Furthermore Plaintiff objects that this request seeks irrelevant information and is not reasonably calculated to lead to the discovery of admissible evidence. Plaintiff further objects to this request because it would require the disclosure of sensitive, confidential, and/or proprietary business information.

21. Documents sufficient to identify all employees of Versata at all times since January 1, 2007.

**RESPONSE:**

Plaintiff objects to this request as overly broad and unduly burdensome. Furthermore Plaintiff objects that this request seeks irrelevant information and is not reasonably calculated to lead to the discovery of admissible evidence. Plaintiff further objects to this request because it would require the disclosure of sensitive, confidential, and/or proprietary business information.

22. Documents sufficient to identify all persons with access to DCM source code since January 1, 2007.

**RESPONSE:**

Plaintiff objects to this request as overly broad and unduly burdensome. Furthermore Plaintiff objects that this request seeks irrelevant information and is not reasonably calculated to lead to the discovery of admissible evidence.

Subject to and without waiving the forgoing plaintiff answers as follows: Plaintiff will produce non-privileged responsive documents and supplement as needed.

23. All Documents constituting or relating to DCM code supplied to the escrow agent prescribed for Ameriprise by the Agreement.

**RESPONSE:**

Plaintiff objects to this request as overly broad and unduly burdensome. Furthermore Plaintiff objects that this request seeks irrelevant information and is not reasonably calculated to lead to the discovery of admissible evidence.

24. All statements taken from any person concerning the subject matter of this litigation.

**RESPONSE:**

Plaintiff will produce non-privileged responsive documents and supplement as needed.

25. All documents relating to Ameriprise's alleged material breach of the Agreement.

**RESPONSE:**

Plaintiff objects to this request for production as overly broad. This is a request for all documents relevant to the lawsuit and is therefore improper pursuant to Tex. R. of Civ. P. 193 *cmt* 2. Therefore no response to this request is required.

# **EXHIBIT E**

CAUSE NO. D-1-GN-12-003588

VERSATA SOFTWARE, INC., F/K/A  
TRILOGY SOFTWARE, INC., AND  
VERSATA DEVELOPMENT GROUP,  
INC., F/K/A TRILOGY DEVELOPMENT  
GROUP, INC.,

Plaintiffs,

V.

AMERIPRISE FINANCIAL, INC.,  
AMERIPRISE FINANCIAL SERVICES,  
INC., AMERICAN ENTERPRISE  
INVESTMENT SERVICES, INC.,

Defendants.

IN THE DISTRICT COURT

OF TRAVIS COUNTY, TEXAS

53<sup>RD</sup> JUDICIAL DISTRICT

Filed in The District Court  
of Travis County, Texas

MAY 08 2013  
At 10:58 AM  
Amalia Rodriguez-Mendoza, Clerk

**ORDER**

Now before the Court is the Motion to Overrule Objections and to Compel Discovery Responses and Depositions filed by Defendants Ameriprise Financial, Inc., Ameriprise Financial Services, Inc., and American Enterprise Investment Services, Inc. (together "Ameriprise"). The Court's rulings are set forth below.

**DISCOVERY REQUESTED IN ADVANCE OF TI HEARING****Rulings on Written Discovery**

Plaintiffs are ordered to provide additional documents and interrogatory answers in accordance with their amended responses and with the below rulings within 3 days of the date of this Order.

**Document Request No. 13:**

All licenses covering or relating to DCM code or components of DCM code effective at any time after October 1999.

Overly Broad

☒ Overruled ☐ Sustained

Unduly Burdensome

☒ Overruled ☐ Sustained

**EXHIBIT E**

Relevance ✓ Overruled \_\_\_\_\_ Sustained  
*Confidentiality* *Objection is sustained 102*  
 Interrogatory No. 7:  
 Identify all third-party licensors of any components of DCM.

Overly Broad ✓ Overruled \_\_\_\_\_ Sustained  
 Unduly Burdensome ✓ Overruled \_\_\_\_\_ Sustained  
 Relevance ✓ Overruled \_\_\_\_\_ Sustained

**Document Request No. 15:**

All documents relating to security measures taken to protect the confidentiality of DCM code.

Objected to producing documents related to the confidentiality of DCM source code.  
✓ Overruled \_\_\_\_\_ Sustained

**Document Request No. 16:**

A copy of the source code for the version of DCM currently licensed to Ameriprise. *- not enough info to rule*

Overly Broad \_\_\_\_\_ Overruled \_\_\_\_\_ Sustained  
 Unduly Burdensome \_\_\_\_\_ Overruled \_\_\_\_\_ Sustained  
 Relevance \_\_\_\_\_ Overruled \_\_\_\_\_ Sustained

**Ruling on Depositions**

Plaintiffs are further ordered to (1) designate witnesses for each of the six topics in Ameriprise's notice of deposition, (2) identify any witnesses who will testify on Plaintiffs' behalf at the temporary injunction hearing, and (3) provide at least two dates on which the corporate representative as well as any other injunction hearing witness(s) will be available for deposition with such dates being at least three (3) business days after Versata serves its amended discovery responses and documents required by the above rulings. All such depositions shall be completed at least three business days prior to a Temporary Injunction hearing.



**OTHER DISCOVERY****Rulings on Plaintiffs' Objections as to Overly Broad, Unduly Burdensome and Relevance****Document Request No. 12:**

All documents constituting or relating to complaints to Versata about software or service issues (other than standard problem logs) by other customers of DCM software, including without limitation, to the extent applicable, Waddell & Reed, Mass Mutual Life Insurance Company, MetLife, Pacific Life and Penn Mutual.

Overly Broad	_____ Overruled	_____ Sustained
Unduly Burdensome	_____ Overruled	_____ Sustained
Relevance	_____ Overruled	_____ Sustained

*not ruled upon  
MSJ***Document Request No. 25:**

All documents relating to Ameriprise's alleged material breach of the Agreement.

Objected that overly broad and improper pursuant to Tex. R. Civ. P. 193 cmt. 2.

\_\_\_\_\_ Overruled \_\_\_\_\_ Sustained

*not ruled upon  
MSJ***Interrogatory No. 8:**

Identify all licensees of DCM.

Overly Broad	<input checked="" type="checkbox"/> Overruled	_____ Sustained
Unduly Burdensome	<input checked="" type="checkbox"/> Overruled	_____ Sustained
Relevance	<input checked="" type="checkbox"/> Overruled	_____ Sustained

**Interrogatory No. 10:**

Identify all Versata employees since January 1, 2007.

Overly Broad	<input checked="" type="checkbox"/> Overruled	_____ Sustained
Unduly Burdensome	<input checked="" type="checkbox"/> Overruled	_____ Sustained
Relevance	<input checked="" type="checkbox"/> Overruled	_____ Sustained

**Document Request No. 21:**

Documents sufficient to identify all employees of Versata at all times since January 1, 2007.

Overly Broad \_\_\_\_\_ Overruled \_\_\_\_\_ Sustained

*not ruled upon*

Unduly Burdensome \_\_\_\_\_ Overruled \_\_\_\_\_ Sustained

Relevance \_\_\_\_\_ Overruled \_\_\_\_\_ Sustained

**Interrogatory No. 11:** *Parkas agree that Versato will provide identify all individuals with access to DCM source code since January 1, 2007.*

Overly Broad \_\_\_\_\_ Overruled ☒ Sustained

Unduly Burdensome \_\_\_\_\_ Overruled ☒ Sustained

Relevance \_\_\_\_\_ Overruled ☒ Sustained

**Interrogatory No. 12:** *Versato agrees to provide a list of patent numbers it believes may relate to DCM.*

Overly Broad ☒ Overruled \_\_\_\_\_ Sustained

Unduly Burdensome ☒ Overruled \_\_\_\_\_ Sustained

Relevance ☒ Overruled ☒ Sustained

**Confidentiality Objections -- (Request for Production Nos. 12-13, 16, and 21)**

In response to Request for Production Nos. 12-13, 16, and 21, Plaintiffs asserted confidentiality objections stating that the requests "would require the disclosure of sensitive, confidential, proprietary and/or trade secret information," (the "confidentiality objection") among other objections, and did not produce documents. Upon the entry of a protective order, Plaintiffs are ordered to produce any documents otherwise withheld on the basis of the confidentiality objection.

IT IS SO ORDERED on this 8 day of May 2013.

*[Signature]*  
JUDGE PRESIDING

# **EXHIBIT F**

**Confidential Pursuant to The Parties' Protective Order**

**CAUSE NO. D-1-GN-12-003588**

VERSATA SOFTWARE, INC., F/K/A	§	IN THE DISTRICT COURT
TRILOGY SOFTWARE, INC., AND	§	
VERSATA DEVELOPMENT GROUP,	§	
INC., F/K/A TRILOGY DEVELOPMENT	§	
GROUP, INC.,	§	
	§	
PLAINTIFFS	§	
	§	
V.	§	OF TRAVIS COUNTY, TEXAS
	§	
AMERIPRISE FINANCIAL, INC.,	§	
AMERIPRISE FINANCIAL SERVICES,	§	
INC., AMERICAN ENTERPRISE	§	
INVESTMENT SERVICES, INC.,	§	
	§	
DEFENDANTS	§	53 <sup>RD</sup> JUDICIAL DISTRICT

**PLAINTIFFS' SECOND AMENDED OBJECTIONS AND ANSWERS TO**  
**DEFENDANTS' FIRST SET OF INTERROGATORIES**

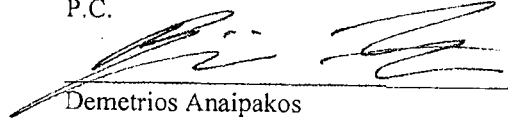
TO: Plaintiff, Ameriprise Financial, Inc., by and through its attorneys of record, Peter M. Lancaster, Heather D. Redmond, Andrea Caron Wilttrout, and Kristin K. Zinsmaster; Dorsey & Whitney LLP; 50 South Sixth Street, Suite 1500; Minneapolis, Minnesota 55402-1498.

Pursuant to the Texas Rules of Civil Procedure, Plaintiffs Versata Software, Inc. and Versata Development Group, Inc., serves these Amended Objections and Answers to Defendants' First Set of Interrogatories.

**EXHIBIT F**

Date: May 7, 2013

Respectfully submitted,  
AHMAD, ZAVITSANOS, ANAIPAKOS, ALAVI & MENSING,  
P.C.



Demetrios Anaipakos  
State Bar No. 00793258  
Amir Alavi  
State Bar No. 00793239  
Steven J. Mitby  
State Bar No. 27037123  
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1221 McKinney Street, Suite 3460  
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Facsimile: (713) 655-0062

MCGINNIS, LOCHRIDGE & KILGORE, L.L.P.  
Travis Barton  
State Bar No. 00790276  
600 Congress Avenue, Suite 2100  
Austin, Texas 78701  
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Facsimile: (512) 495-6093  
ATTORNEYS FOR PLAINTIFFS

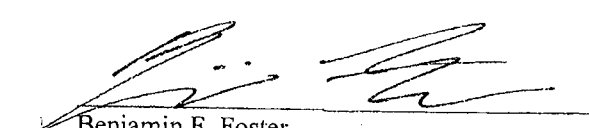
**CERTIFICATE OF SERVICE**

I certify that a true and correct copy of the foregoing document was served upon the following counsel of record by facsimile and email on May 22, 2013:

Peter M. Lancaster  
Heather D. Redmond  
Dorsey & Whitney LLP  
50 South Sixth Street, Suite 1500  
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Benjamin F. Foster

**AMENDED OBJECTIONS AND ANSWERS TO FIRST SET OF INTERROGATORIES**

1. Substantiate all occasions on which Versata instructed Ameriprise or Infosys not to decompile files.

**ANSWER:**

Plaintiff objects on the grounds that this interrogatory is overbroad and unduly burdensome; impermissibly requires Versata to marshal its evidence through the use of the word "all"; and is not reasonably calculated to lead to the discovery of admissible evidence in that Versata had no obligation to "instruct" Ameriprise regarding obligations that were explicitly stated in the 1999 Master License Agreement that Ameriprise executed with Versata.

Subject to and without waiving the forgoing objections, Versata responds as follows: Versata has repeatedly instructed both Ameriprise and Infosys that de-compilation is not permitted. By way of example, and without limitation, Section 10.1 of the 1999 Master License Agreement between Versata and Ameriprise specifically prohibits decompilation, copying, or reverse-engineering. Other parts of the MLA also prohibit Ameriprise from misusing of Versata's confidential information (e.g., Section 10.1) and from using competitors like Infosys as contractors on Versata software (e.g., Section 4.8). In addition, the MLA contains strict anti-waiver provisions (e.g., Section 12.9).

Versata reiterated its instruction that decompilation is impermissible in correspondence, including, for example, an August 2, 2010 email and August 19, 2010 letter from Hemant Shah to Ryan Macomb and subsequent correspondence between Versata and Ameriprise. Versata also had multiple discussions with Ameriprise in 2010, 2011, and 2012 in which Versata representatives continued to reiterate this instruction. In addition, Versata also sued Infosys in 2010 for decompiling software files and has reiterated its objections to decompilation in multiple public court filings.

Versata reserves the right to supplement this response as it continues to marshal its evidence, investigate its claims, and conduct discovery.

2. Substantiate any alleged occasions that DCM files at Ameriprise have been decompiled, including without limitation the dates, circumstances, and identities of persons involved.

**ANSWER:**

Plaintiff objects on the grounds that this interrogatory is overbroad and unduly burdensome; and impermissibly requires Versata to marshal its evidence through the use of the word "any." Plaintiff further objects on the grounds that the information responsive to this request for production is governed by the protective order in place in *Versata Software et al v. Infosys Technologies LTD.*,

Case No. 1:10-cv-00792 pending in the Western District of Texas Austin Division, which restricts Versata's ability to produce information to Ameriprise in this litigation.

Subject to and without waiving the foregoing, Versata responds as follows: Through its litigation with Infosys Versata has uncovered significant evidence of DCM decompilation. Specifically, on October 25, 2012, in response to discovery, Infosys identified approximately 99 discrete instances of decompilation in a spreadsheet. This spreadsheet will be produced once Ameriprise, Infosys and Versata reach terms on a protective order permitting the production of Infosys Attorney's Eyes Only materials to Ameriprise in this litigation. On that same date, Infosys also separately identified the 5,000 decompiled Versata DCM files that, at the time, Infosys claimed were stored on a laptop in Bangalore. Versata recently learned that these files are actually on an Infosys server in India to which Versata believes that multiple Infosys personnel have had access.

Versata reserves the right to supplement this response as it continues to marshal its evidence, investigate its claims, and conduct discovery.

3. Identify all competitors of Versata with respect to the development of enterprise compensation or configuration software since January 1, 2007, including without limitation identification of the specific software product that makes such entity a competitor.

**ANSWER:**

Plaintiff objects on the grounds that this interrogatory is overbroad and unduly burdensome. Plaintiff further objects that to the extent this interrogatory seeks information regarding entities not utilized by Ameriprise such information is not relevant, and is not reasonable calculated to lead to the discovery of relevant information and is therefore outside the scope of discovery.

Subject to and without waiving the foregoing, Versata answers as follows: Infosys which owns MacCamish Systems is a competitor of Versata in the development of compensation and configuration software because MacCamish develops and sells enterprise compensation and configuration software (including its PMACS product) that competes directly with Versata. TCS is also a competitor of Versata because TCS develops and sells enterprise compensation and configuration software (including its BANCS product) that competes directly with Versata. Versata has many other competitors in the enterprise compensation and configuration software space, but has limited its answer to the two competitors that Ameriprise has admitted to giving access to Versata's software in violation of the Master License Agreement.

Versata reserves the right to supplement this response as it continues to marshal its evidence, investigate its claims, and conduct discovery.

4. Substantiate any claim that Infosys, TCS, or any other third party providing services relating to Ameriprise's DCM is a competitor of Versata with respect to the development



of enterprise compensation or configuration software, including without limitation identification of the specific competing software product or service and any occasion on which Versata has lost revenues as a result of such alleged competitor.

**ANSWER:**

Plaintiff objects on the grounds that this interrogatory is overbroad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence. Subject to and without waiving these objections, relevant information is provided in response to Interrogatory No. 3 above.

Versata reserves the right to supplement this response as it continues to marshal its evidence, investigate its claims, and conduct discovery.

5. Substantiate all efforts you have made since January 1, 2007 to maintain confidentiality of DCM code.

**ANSWER:**

Plaintiff objects on the grounds that this interrogatory is overbroad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence. These objections specifically include, but are not limited to, defendants use of the word "all" as unduly burdensome, requires plaintiff to marshal all its evidence and is beyond the scope of discovery.

Subject to and without waiving the foregoing Versata answers as follows: The efforts Versata has undertaken to protect the confidentiality of DCM source code include, by way of example and not limitation, the following: (1) requiring confidentiality agreements with customers that contain similar requirements to the ones in the MLA, including prohibitions on decompilation, copying, reverse-engineering, or disclosure to competitors; (2) requiring confidentiality agreements with employees and contractors; (3) limiting access to DCM source code to employees and contractors who work on source code; (4) storing source code on secure servers; (5) denying customers and competitors access to source code; (6) requiring customers to grant Versata audit rights; (7) engaging in litigation against Infosys to enforce Versata's policy against decompilation.

Versata reserves the right to supplement this response as it continues to marshal its evidence, investigate its claims, and conduct discovery.

6. Substantiate any damage caused by Ameriprise's alleged breach of the Agreement, including without limitation any damage claimed in connection with any decompilation.

**ANSWER:**

Versata would refer Ameriprise to Versata's disclosures items 194.2(c) and (d) as they are updated from time to time.

7. Identify all third-party licensors of any components of DCM.

**ANSWER:**

G-Dev FZ-LLC has performed development services for Versata Software related to DCM. However, as described in that agreement Versata Software retains legal title to most of the work done by G-Dev. However, in some instances as described in section 7.2 of that agreement G-Dev may retain ownership and license products to Versata.

8. Identify all licensees of DCM. [by order of the court Versata will also provide whether or not the company owes Versata confidentiality regarding DCM]

**ANSWER:**

Versata is answering the question with respect to current licensees as called for by the interrogatory. A review of prior licensees shows that all prior licensees also contracted to keep DCM confidential.

Penn Mutual Life – Agreed to keep DCM confidential  
Pacific Life – Agreed to keep DCM confidential  
Aviva – Agreed to keep DCM confidential  
United Health Care – Agreed to keep DCM confidential  
Wellmark – Agreed to keep DCM confidential  
Highmark – Agreed to keep DCM confidential  
American Family – Agreed to keep DCM confidential  
MetLife – Agreed to keep DCM confidential

9. Identify all legal proceedings, pending at any time since January 1, 2005, involving intellectual property claims or claims relating to DCM in which you have been a party.

**ANSWER:**

Plaintiff answers as follows:

- This lawsuit.
- Ameriprise Financial, Inc., V. Versata Software, Inc., Court File No. 27-cv-13-211 Filed by Ameriprise Financial in Minnesota. Stayed by the Minnesota Court.
- Versata Software et al v. Infosys Technologies LTD., Case No. 1:10-cv-00792 pending in the Western District of Texas Austin Division.

10. Identify all Versata employees since January 1, 2007.

**ANSWER:**

Below is a list of Versata Software's employees. Note that Versata also utilizes a large number of contractors who are not listed below.

Aman Babbar  
400 Cambridge Street Apt #109  
Hopkins, MN 55343  
or  
12310 Singletree Lane Apt #2347  
Eden Prairie, MN 55344

Tarun Bansal  
3356 Ambassador Drive Apt #4  
Madison, WI 53718

Christoph Belanger  
16 Walkup Road  
Sudbury, MA 01776

Michael E. Biwer  
790 Hartglen Avenue  
Westlake Village, CA 91361

Jeffrey R. Bobick  
801 West 5<sup>th</sup> Street #1703  
Austin, TX 78703

Jeffrey S. Bolke  
5912 Waymaker Cove  
Austin, TX 78746

Craig S. Bradley  
2 Hillview Drive  
Round Rock, TX 78664

Adam D. Bursey  
150 Hannah Drive  
Dripping Springs, TX 78620

Steve Burton  
10602 Beckwood Drive  
Austin, TX 78726

Daniel P. Carroll  
2122 Melridge Pl  
Austin, TX 78704

Kenneth R. Chatfield  
8215 Holly Road  
Brentwood, TN 37027

Kevin Cobourn  
3113 Paradise Valley  
Plano, TX 75229

Christopher Cooper  
8117 Campeche Bay Pl  
Round Rock, TX 78681

Aditya Datta  
8810 Spring Lake Drive  
Austin, TX 78750

Peter Deelstra  
12823 Texas Sage Ct  
Austin, TX 78732

Chuck Dietrich  
1707 Rabb Rd  
Austin, TX 78704

Christa Fey  
1900 Cervin Blvd  
Austin, TX 78728

Kimberly Fisher  
314 Chester Pike #D6  
Norwood, PA 19074

Stephen David Goldsmith  
510 E. 41<sup>st</sup> Street  
Austin, TX 78751

Mark N. Haney  
14924 Knollview Drive  
Dallas, TX 75248

Andrew J. Heaton

5825 Hummingbird Ln  
Clarkston, MI 48346

Julie Hill  
4119 E. 12<sup>th</sup> Street Unite #1  
Austin, TX 78721

Val Huber  
4872 Reno Lane  
Richmond, CA 94803

Margaret A. Huff  
7702 Meadowview Lane  
Austin, TX 78752

Bart Huthwaite, Jr.  
6062 Deguise Ct  
Rochester Hills, MI 48306

Randall E. Jacops  
13115 Short Vista Dr #6  
Austin, TX 78732

Akash Jain  
2328 City Lights Drive  
Aliso Viejo, CA 92656  
or  
2 Enterprise Apt 4309  
Aliso Viejo, CA 92656

Nikhil Jain  
6363 Flat Rock Road Apt 257  
Columbus, GA 31907

Tushar S. Jasrotia  
1150 Hennepin Ave. Apt #1107  
Minneapolis, MN 55403

Gaurav Kalra  
13 Mosher St Apt 6  
West Springfield, MA 01089

John W. Kamm  
2113 Cliffs Edge

Austin, TX 78733-6016

Leelakumar Kaza  
1115 Italy Dr  
Allen, TX 75013

Ryan P. Kennedy  
1357 Monmouth Road  
Eastampton, NJ 08060-3900

Emily J. Kleinsorge  
2330 Montgomery Park #417  
Conroe, TX 77304

Vikash Kodati  
8808 W. 64<sup>th</sup> Place #201  
Merriam, KS 66202  
or  
8911 W. 64<sup>th</sup> Terrace #204  
Merriam, KS 66202

Frank Kopas  
860 South Road  
Belmont, CA 94002

Vineet Kumar  
400 Cambridge Street Apt #109  
Hopkins, MN 55343

Jacob Dante Leffler  
12520 Canyon Glen Dr  
Austin, TX 78732

Guillermo Javier Leon  
1014 Challenger  
Austin, TX 78734

Kassidy D. Lytle  
6003 Old Bullard Road #209  
Tyler, TX 75703

Patrick Madden  
8959 Sussex  
White Lake, TX 48386

John A. Magdaleno

10600 Zeus Cove  
Austin, TX 78759

Duncan McDougall  
3109 Grimes Ranch Rd  
Austin, TX 78732

Steven McPike  
6921 Via Correto Drive  
Austin, TX 78749

David R. Middleton  
2501 White Rock Dr  
Austin, TX 78757

Sandeep Misri  
919 233<sup>rd</sup> Ave NE  
Samamish, WA 98074

Charles Moon  
3203 Lazada Lane  
Round Rock, TX 78681

Rama Nalla  
4012 Panther Ridge Lane  
Plano, TX 75074

Patrick T. Nichols  
7320 Vista Mountain Drive  
Austin, TX 78731

Karthikeyan Pandiyan  
7400 W. 62<sup>nd</sup> Street Apt #3  
Overland Park, KS 66202  
or  
10 Gomathi Nagar  
Sekkankanni Road  
Kumbakonam 61200

Tony Parlak  
5903 Cimarron Trail  
Lafo Vista, TX 78645

Jamie Poltronieri

8813-B Mountain Shadows C  
Austin, TX 78735

Donny Przygodski  
6400 Bermuda Dunes Dr  
Plano, TX 75093

Brian Rauch  
1004 Whittier  
Gross Point Park, MI 48230

Sunil K. Rao  
303 Minuteman Drive  
Collegeville, PA 19246

Matthew J. Schemmel  
1603 Garnass Drive  
Austin, TX 78725

Saugata Sengupta  
2200 Nueces St #9  
Austin, TX 78705

Brian Edward Shicoff  
8700 Brodie Ln #1634  
Austin, TX 78745

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Rangarajan Venkatesan  
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Ian Ward  
8007 Tahoe Park Circle  
Austin, TX 78726

Charles Wiemann  
332 Logan Ranch Road  
Georgetown, TX 78628

David A. Williamson  
1104 Bevinger Drive  
El Dorado Hills, CA 95762

11. Identify all entities with access to DCM source code since January 1, 2007.

**ANSWER:**

The only entities that have had authorized access to DCM since 2007 are as follows:

DevFactory FZ-LLC  
Versata Software

Ameriprise through its agents Infosys has also had unauthorized access to DCM source code through de-compilation. Versata is in the process of discovering what other entities may have been given access to DCM source code by virtue of Infosys's misconduct.

12. Provide a list of patent numbers that may relate to DCM

This answer provides a list of patents which may relate to DCM. Versata has no patent claims in this case and this answer is neither Versata nor Versata's legal counsel providing a opinion on whether the below listed patents actually cover DCM or whether there are other patents within Versata's patent portfolio which cover DCM. Versata was not required to perform or disclose its analysis of these patents or their scope of coverage.

7,904,326  
7,908,304  
7,925,513  
7,958,024

**ANSWER:**

Plaintiff objects on the grounds that this interrogatory is overbroad and unduly burdensome. Plaintiff further objects that to the extent this interrogatory seeks information which is not relevant, and is not reasonable calculated to lead to the discovery of relevant information and is therefore outside the scope of discovery. Finally Plaintiff objects that this interrogatory is impermissibly vague. It is not clear what Ameriprise means by patents "relating to" DCM.

13. Identify the dates and circumstances relating to (a) the occasion on which You first learned that decompilation of DCM code had occurred with respect to Ameriprise's DCM and (b) the occasion on which you first objected to decompilation of DCM code with respect to Ameriprise's DCM.

**ANSWER:**

Plaintiff objects on the grounds that this interrogatory is overbroad and unduly burdensome.

Subject to and without waiving the forgoing defendant answers as follows:

Versata management first learned of decompilation on or around July 30, 2010. Versata objected immediately thereafter, including in an August 2, 2010 email and August 19, 2010 letter from Hemant Shah to Ryan Macomb.

**\*\* Transmit Confirmation Report \*\***

P.1  
Line Number:1  
AZA Law

May 22 2013 02:15pm

Fax:7136550062

Name/Fax No.	Mode	Start	Time	Page	Result	Note
9/P15124740731	Normal	22.02:11pm	1'56"	16	# 0 K	BrdCast
9/P16123402868	Normal	22.02:13pm	1'48"	16	# 0 K	BrdCast

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9/P15124956093	Normal	22.02:11pm	2'49"	16	# 0 K	BrdCast

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**FAX COVER**

Date: May 22, 2013 File No: TLG018  
To: Steve McConnico Fax No: 512.474.0731  
Christopher D. Silco  
To: Travis Barton Fax No: 512.495.6093  
To: Peter M. Lancaster Fax No: 612.340.2868  
Heather D. Redmond  
From: Benjamin F. Foster  
Total pages including cover: 16

**MESSAGE**

Attached is:  
Plaintiffs' Second Amended Objections and Answers to Defendants' First set of Interrogatories.

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# **EXHIBIT G**



PETER M. LANCASTER  
(612) 340-7811  
FAX (612) 340-8856  
lancaster.peter@dorsey.com

June 19, 2013

**BY E-MAIL**

Amir Alavi, Esq.  
Ahmad, Zavitsanos, Anaipakos, Alavi &  
Mensing, P.C.  
1221 McKinney Street, Suite 3460  
Houston, TX 77010

**Re: *Versata Software v. Ameriprise Financial***

Dear Amir:

We have become aware of an issue that persuades us that it would benefit both Ameriprise and Versata to end this litigation promptly.

Discovery has confirmed the presence of third-party software within what Versata has asserted to be proprietary and confidential DCM code. We have also learned that Versata has not complied with the terms and conditions of the licenses for some or all of that software, thereby terminating Versata's right to use and distribute such software within DCM. Versata's failure to comply with third-party licenses supports Ameriprise's claim that Versata breached its warranty in §8.1 of the Master License Agreement that, among other things, "Licensor has the right to furnish the Products, Documentation, and other materials ... free of all liens, claims, encumbrances and other restrictions..."

In addition, certain of the third-party software Versata has incorporated within DCM is open source software with significant consequences to this case. Recently obtained Versata documents confirm the presence of dozens of open source programs in DCM that are subject to various open source licenses. One example of open source software in DCM is Ximpleware's XML parser, contained in the vtd-xml.jar file. This parser enables DCM to read and parse XML files that get pulled from external sources, so that DCM can understand and manipulate the contents of such files. The current DCM version installed at Ameriprise, Version 3.9, incorporates Ximpleware into at least three distinct portions of DCM code. The integration of Ximpleware's parser into DCM is illustrated by the fact that of the 700 or so component parts of DCM that appear to originate with Versata, 362 depend directly or indirectly on Ximpleware. DCM uses this open-source parser to perform core functions like compensation and licensure verification. We understand that if Ximpleware's software were to be removed from Version 3.9 of DCM, DCM would not function. Versata's representative confirmed at the deposition on Friday that DCM is a single, integrated whole, all of whose files are interrelated.

DORSEY & WHITNEY LLP • WWW.DORSEY.COM • T 612.340.2600 • F 612.340.2868  
SUITE 1500 • 50 SOUTH SIXTH STREET • MINNEAPOLIS, MINNESOTA 55402-1498  
USA CANADA EUROPE ASIA-PACIFIC

**EXHIBIT G**



Amir Alavi, Esq.  
June 19, 2013  
Page 2

Ximpleware's parser is a third-party, open-source program readily downloadable from the Internet. Its use is conditioned upon and governed by Version 2 of the GNU General Public License, or "GPL." The GPL is an open source software license written and promulgated by the Free Software Foundation ("FSF") to ensure two things: that parties cannot misappropriate the work product of open-source developers for commercial gain without severe consequences; and to ensure that all recipients of GPL-licensed software continue to have access to at least its source code, and remain free to use and modify source code for their own purposes without restriction. A copy of version 2 of the GPL is enclosed.

The GPL is considered a "viral" license in that its terms and conditions apply to any program that includes GPL code. A GPL licensee "must cause any work that you distribute or publish, that in whole or in part contains or is derived from the [GPL] Program or any part thereof, to be licensed as a whole at no charge to all third parties under the terms of this License." §0; §2(b). "These requirements apply to the modified work as a whole." §2. The terms and conditions of the GPL, rather than those of the MLA, govern Versata's distribution of DCM, because Versata chose to incorporate and distribute a program that incorporates the GPL-licensed Ximpleware software. *Id.* §5. In other words, because Ximpleware is provided under the terms of the GPL, and DCM incorporates Ximpleware as a key component, DCM in its entirety is now governed by the terms and conditions of the GPL.

The GPL requires anyone who incorporates a GPL-licensed program in a broader program, and particularly those who integrate such software into a broader program, to make the broader program's source code available to its recipients. It also prohibits anyone who incorporates a GPL-licensed program from imposing any restrictions on the recipients' use of the distributed program as a whole. As stated in the GPL:

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Because a work based on the Program is defined in Section 0 of the GPL to include works like DCM that contain the open source software, Ameriprise is entitled to have and use the DCM source code for its own purposes free from the restrictions found in the MLA. For at least these



Amir Alavi, Esq.  
June 19, 2013  
Page 3

reasons, we cannot see any plausible basis for any Versata claim that it is entitled to prevent Ameriprise or any other DCM customer from free use of DCM source code. We accordingly demand release of the source code without restriction for DCM Version 3.9, including all software incorporated from prior or subsequent versions or patches, and related documentation.

We think it is in Versata's interest to resolve this case now, because it is likely that before and during any temporary injunction hearing, summary judgment hearing, and/or trial we will be compelled to explain to the Court this additional reason that Versata's case has no basis. A public debate between the parties could have a substantial impact on Versata's business wholly apart from its relationship with Ameriprise. The author and owner of the copyright to Ximpleware's software and the Free Software Foundation may also have an interest in Versata's actions, and we believe that it would benefit Ameriprise and the Court to involve one or both entities in this case should it continue much longer.

Please let us know by June 27, 2013 whether Versata has any interest in meeting to resolve Versata's obligations under the GPL without further hearings or motion practice. We will assume that a failure to respond indicates Versata's preference to resolve this debate through Court processes.

Very truly yours,

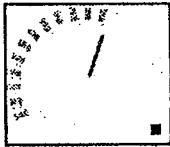
A handwritten signature in black ink, appearing to read "P. M. Lancaster", written over a horizontal line.

Peter M. Lancaster

PML:dbf

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  - TERMS AND CONDITIONS FOR COPYING, DISTRIBUTION AND MODIFICATION
  - How to Apply These Terms to Your New Programs

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Version 2, June 1991

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```

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as published by the Free Software Foundation; either version 2
of the License, or (at your option) any later version.
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```
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for details.
```

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```
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(which makes passes at compilers) written
by James Hacker.
```

```
signature of Ty Coon, 1 April 1989
Ty Coon, President of Vice
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# **EXHIBIT H**

**(Redacted pursuant to  
Agreed Protective Order)**

# **EXHIBIT H**

RANGARAJAN VENKATESAN

6/14/2013

1 (Pages 1 to 4)

<p>1 NO. D-1-QN-12-003588</p> <p>2 VERSATA SOFTWARE, INC., ) IN THE DISTRICT COURT</p> <p>3 E/k/a TRILOGY SOFTWARE, )</p> <p>4 INC., and VERSATA )</p> <p>5 DEVELOPMENT GROUP, INC., )</p> <p>6 E/k/a TRILOGY DEVELOPMENT )</p> <p>7 GROUP, INC., )</p> <p>8 Plaintiffs, )</p> <p>9 vs. ) TRAVIS COUNTY, TEXAS</p> <p>10 )</p> <p>11 )</p> <p>12 )</p> <p>13 )</p> <p>14 )</p> <p>15 )</p> <p>16 )</p> <p>17 )</p> <p>18 )</p> <p>19 )</p> <p>20 )</p> <p>21 )</p> <p>22 )</p> <p>23 )</p> <p>24 )</p> <p>25 )</p> <p>AMERIPRISE FINANCIAL, )</p> <p>INC., AMERIPRISE )</p> <p>FINANCIAL SERVICES, INC., )</p> <p>AMERICAN ENTERPRISE )</p> <p>INVESTMENT SERVICES, )</p> <p>INC., )</p> <p>Defendants. ) 53RD JUDICIAL DISTRICT</p> <p>*****</p> <p>ORAL AND VIDEOTAPED DEPOSITION OF</p> <p>CORPORATE REPRESENTATIVE OF VERSATA SOFTWARE, INC.</p> <p>RANGARAJAN VENKATESAN</p> <p>JUNE 14, 2013</p> <p>*****</p> <p>ORAL AND VIDEOTAPED DEPOSITION OF CORPORATE</p> <p>REPRESENTATIVE OF VERSATA SOFTWARE, INC.,</p> <p>RANGARAJAN VENKATESAN, produced as a witness at the</p> <p>instance of the Defendants and duly sworn, was taken in</p> <p>the above-styled and numbered cause on June 14, 2013,</p> <p>from 9:03 a.m. to 2:02 p.m., before Kim Seibert, CSR in</p> <p>and for the State of Texas, reported by machine</p> <p>shorthand, at the law offices of MCGINNIS, LOCHRIDGE &amp;</p> <p>KILGORE, LLP, 600 Congress Avenue, Suite 2100, Austin,</p> <p>Texas, pursuant to the Texas Rules of Civil Procedure</p>	<p>1 APPEARANCES</p> <p>2</p> <p>3 FOR THE PLAINTIFFS:</p> <p>4 Mr. Travis Barton</p> <p>5 MCGINNIS, LOCHRIDGE &amp; KILGORE, LLP</p> <p>6 600 Congress Avenue</p> <p>7 Suite 2100</p> <p>8 Austin, Texas 78701</p> <p>9 (512) 495-6005</p> <p>10 tcbarton@mcginnislaw.com</p> <p>11</p> <p>12 - and -</p> <p>13 Mr. Benjamin Foster</p> <p>14 AHMAD, ZAVITSANOS, ANAIPAKOS, ALAVI &amp; MENSING, P.C.</p> <p>15 1221 McKinney Street</p> <p>16 Suite 3460</p> <p>17 Houston, Texas 77010</p> <p>18 (713) 655-1101</p> <p>19</p> <p>20 FOR THE DEFENDANTS:</p> <p>21 Mr. Peter M. Lancaster</p> <p>22 DORSEY &amp; WHITNEY, LLP</p> <p>23 50 South Sixth Street</p> <p>24 Suite 1500</p> <p>25 Minneapolis, Minnesota 55402-1498</p> <p>(612) 340-2600</p> <p>lancaster.peter@dorsey.com</p> <p>- and -</p> <p>Mr. Christopher D. Silco</p> <p>SCOTT, DOUGLASS &amp; MCCONNICO, LLP</p> <p>600 Congress Avenue</p> <p>Suite 1500</p> <p>Austin, Texas 78701</p> <p>(512) 495-6300</p> <p>csilco@scottdoug.com</p> <p>ALSO PRESENT:</p> <p>Jonathan Powers</p> <p>Brent Kirby - Videographer</p>
<p>1 and the provisions stated on the record or attached</p> <p>2 hereto.</p> <p>3</p> <p>4</p> <p>5</p> <p>6</p> <p>7</p> <p>8</p> <p>9</p> <p>10</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>	<p>1 REPORTED BY:</p> <p>2 Kim Seibert, CSR, RPR</p> <p>3 U.S. Legal Support, Inc.</p> <p>4 Austin Centre</p> <p>5 701 Brazos, Suite 380</p> <p>6 Austin, Texas 78701</p> <p>7</p> <p>8</p> <p>9</p> <p>10</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>

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EXHIBIT H



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<p>1 INDEX</p> <p>2 Appearances..... 3</p> <p>3 RANGARAJAN VENKATESAN</p> <p>4 Examination by Mr. Lancaster..... 7</p> <p>5 Witness' Signature Page..... 145</p> <p>6 Reporter's Certificate..... 147</p> <p>7</p> <p>8</p> <p>9 EXHIBITS</p> <p>10 NUMBER DESCRIPTION PAGE</p> <p>11 Exhibit 31 Notice of Deposition 8</p> <p>12 Exhibit 32 Professional Services Agreement 46</p> <p>13 Exhibit 33 oDesk User Agreement 49</p> <p>14 Exhibit 34 Trilogy Document 92</p> <p>15 Exhibit 35 Printout Showing Number of 114</p> <p>16 Packages Within DCM</p> <p>17 Exhibit 36 Architectural Views of one of 123</p> <p>18 Documents Shipped with</p> <p>19 DCM</p> <p>20 Exhibit 37 Source Code 126</p> <p>21 Exhibit 38 Document Stamped 127</p> <p>22 Trilogy E 22637</p> <p>23 Exhibit 39 Document Stamped 129</p> <p>24 Trilogy E 139896</p> <p>25 Exhibit 40 Document Stamped 130</p> <p>26 Trilogy E 166964</p> <p>27 Exhibit 41 Document 131</p>	<p>7</p> <p>1 THE VIDEOGRAPHER: Stand by. This is the</p> <p>2 videotaped oral deposition of Rangarajan Venkatesan.</p> <p>3 Today's date, June 14th, 2013. The approximate time,</p> <p>4 9:02 a.m. We're recording and on the record.</p> <p>5 RANGARAJAN VENKATESAN,</p> <p>6 having been first duly sworn, testified as follows:</p> <p>7 EXAMINATION</p> <p>8 BY MR. LANCASTER:</p> <p>9 Q. Mr. Venkatesan, could you state your name and</p> <p>10 your address for the record?</p> <p>11 A. Rangarajan Venkatesan, 2401 Dcer Pass, D-e-e-</p> <p>12 P-a-s-s, Austin, Texas, 78746.</p> <p>13 Q. Who is your employer?</p> <p>14 A. I work for Trilogy Software. My relationship</p> <p>15 with Trilogy Software is that of I'm a consultant to</p> <p>16 Trilogy Software.</p> <p>17 Q. Is there any company that you're a direct</p> <p>18 employee of?</p> <p>19 A. I am -- I individually own Banyan Associates.</p> <p>20 Q. And how do you spell Banyan Associates?</p> <p>21 A. B-a-n-y-a-n Associates.</p> <p>22 Q. And where is Banyan Associates headquartered?</p> <p>23 A. Austin, Texas.</p> <p>24 Q. How long have you been a consultant for</p> <p>25 Trilogy Software?</p>
<p>6</p> <p>1 Exhibit 42 SVN Notification, 131</p> <p>2 Financial Services</p> <p>3 Exhibit 43 E-mail 132</p> <p>4 Exhibit 44 E-mail String 133</p> <p>5 Exhibit 45 E-mail String 134</p> <p>6 Exhibit 46 E-mail dated June 5th, 2009 135</p> <p>7 Exhibit 47 E-mails 137</p> <p>8 Exhibit 48 E-mail 138</p> <p>9</p> <p>10</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>	<p>8</p> <p>1 A. Since 2010.</p> <p>2 Q. Did you have any connection to a</p> <p>3 Versata-related entity before that?</p> <p>4 A. I did. I was an employee of Versata Software</p> <p>5 prior to that.</p> <p>6 Q. For how long were you an employee of Versata</p> <p>7 Software?</p> <p>8 A. Since March 6th, 2000 I've been an employee of</p> <p>9 Versata or Trilogy, the combination, except for a</p> <p>10 six-month duration when I worked for another</p> <p>11 organization.</p> <p>12 Q. And was the other organization a non-Versata</p> <p>13 company?</p> <p>14 A. Yes.</p> <p>15 Q. Please look at what we will mark as</p> <p>16 Exhibit 31.</p> <p>17 (Exhibit No. 31 marked.)</p> <p>18 Q. (BY MR. LANCASTER) Exhibit 31 is a notice of</p> <p>19 deposition in this case. But what I want to ask you</p> <p>20 about first is the name of the parties in this case.</p> <p>21 You see that at the top it says Versata Software, Inc.,</p> <p>22 formerly known as Trilogy Software, Inc. And you</p> <p>23 indicated that you were a consultant for Trilogy</p> <p>24 Software. Do you believe that's the same entity as</p> <p>25 Versata Software?</p>

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<p>9</p> <p>1 A. From a -- from a -- from a working 2 perspective, yes. In terms of the legal entities, they 3 might be two different entities. 4 Q. And do you know whether they're two different 5 entities? 6 A. I don't specifically know whether they're 7 two different entities. 8 Q. Have you ever had any involvement with Versata 9 Development Group or Trilogy Development Group? 10 A. From a legal point of view, what the 11 differences are between these companies, I do not know. 12 But I know that these terms have been used 13 interchangeably over the years from a working 14 relationship perspective. So I'm -- you know, the 15 previous -- the previous years at Trilogy I might have 16 worked for Trilogy Development Group because I was a 17 developer back then. 18 Q. As consultant, do you have any other title, 19 such as program director or any other title? 20 A. My current title is senior vice president of 21 operations for financial services group at Trilogy. 22 Q. And whom do you report to? 23 A. I report to Joe Kelly. 24 Q. And what's Mr. Kelly's position? 25 A. President of financial services group,</p>	<p>11</p> <p>1 consultant since 2010. Have you also had that title, 2 senior vice president for operations for financial 3 services, since that time? 4 A. No. 5 Q. How long have you had that title? 6 A. Since November of 2012. 7 Q. What is Mike Noto's position with the company 8 today? 9 A. He's a program director. 10 Q. Does Mr. Noto operate in the same level of the 11 organization as Hermant Shah? 12 A. Yes. You could say that they're both program 13 directors. 14 Q. And does Hermant Shah also report to you? 15 A. From a project responsibility perspective or 16 client responsibility perspective, yes. From an 17 organizational structure within Trilogy, no. 18 Q. Do you have any reporting direct relationship 19 in either direction with Leela Kaza? 20 A. Yes. He -- I report -- another relationship 21 from a reporting structure is, I report up to 22 Leela Kaza. But that's a dotted -- again, it's a 23 dotted relationship. 24 Q. Today are you a consultant or otherwise 25 employed by any company other than Trilogy or Versata</p>
<p>10</p> <p>1 Trilogy. 2 Q. And do you know to whom he reports to? 3 A. I don't know. 4 Q. Are there people who report to you? 5 A. Yes. 6 Q. And in that first level of reporting 7 responsibility, approximately how many people are 8 there? 9 A. Approximately about seven or eight. 10 Q. And could you identify those people amongst 11 those seven or eight that you can name? 12 A. Sure. Aman Babbar, Tushar Jasrotia, 13 Karthik Pandian, Asrar Hussain, Dave Monfore. 14 Q. Monfore is M-o-n-f-o-r-e? 15 A. M-o-n-f-o-r-e, I believe. 16 Q. Okay. 17 A. Mike Noto. Those are all the names. 18 Q. And, in turn, are there people who report to 19 those people for whom you are also responsible? 20 A. They do, yes. 21 Q. And in the total set of people who are 22 directly or indirectly reporting to you, what's that 23 number of people? 24 A. I would say approximately 30. 25 Q. Now, you mentioned that you've been a</p>	<p>12</p> <p>1 Software? 2 A. Could you repeat that question, please? 3 Q. Yes. I'm just asking you whether apart from 4 your work with Trilogy Software and time that you 5 presumably spend with Banyan Associates, are you 6 employed by any other entity or a consultant to any 7 other entity? 8 A. I'm not a consultant to any other entity, no. 9 Q. Do you have some other working relationship 10 with some other entity? 11 A. Yes. 12 Q. And what is that? 13 A. Hikezee, Inc. 14 Q. And what is -- could you spell that for us? 15 A. H-i-k-e-z-e-e, Inc. 16 Q. And what is your involvement with that 17 company? 18 A. I am one of the -- I'm part owner of the 19 company. 20 Q. And then apart from Trilogy or Versata 21 Software and Banyan Associates and Hikezee, Inc., are 22 there any other companies with whom you have a 23 relationship today? 24 A. No, there's no other company. 25 Q. What proportion of your time do you spend on</p>

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<p style="text-align: right;">13</p> <p>1 work that is not related to a Trilogy or a Versata 2 company? 3 A. 20, 30 percent. 4 Q. During your time at the company, have you ever 5 worked on site at the Ameriprise facility? 6 A. Clarification. What is "worked" in the 7 capacity of? 8 Q. Well, let's start with an easy one. Have you 9 visited the Ameriprise facility in Minneapolis? 10 A. Yes, I have. 11 Q. And have you ever had any job responsibilities 12 for work done at Ameriprise? 13 A. No. I've not had any job responsibilities 14 directly, no. 15 Q. And so what was the occasion for you to go to 16 Ameriprise in Minneapolis? 17 A. I was requested to go to meet with a customer 18 as an expert in the distribution channel management 19 product to gather -- you know, to understand their, you 20 know, bigger -- you know, the business requirements of 21 one of their solutions that they wanted developed using 22 DCM. And I was there as an expert on the project. 23 Q. And when was that? 24 A. I don't know the specific date. I believe I 25 was there twice over the last ten years. I can give</p>	<p style="text-align: right;">15</p> <p>1 Q. And what is his responsibility with respect to 2 DCM today? 3 A. He helps in development of the DCM solution. 4 And his other responsibility is helping us demonstrate 5 capabilities of DCM to -- to customers. 6 Q. Including the time that you talked to the 7 lawyers, can you estimate the number of hours that you 8 spent preparing for the deposition? 9 A. 80 hours. 10 Q. 8-0 hours? 11 A. That's right. 12 Q. Let's return to Exhibit 31 and, in particular, 13 the last page of that, Page 5, which is headed 14 Exhibit A. Have you seen this document before? 15 A. Yes, I have. 16 Q. You understand that you've been designated by 17 the company to provide testimony on these six topics? 18 A. Yes, I do. 19 Q. So Topic No. 1 is, quote, A description of all 20 code and documentation that Versata has escrowed 21 pursuant to the agreement for the benefit of 22 Ameriprise, close quote. 23 Do you believe you can speak for the 24 company on that issue? 25 A. Yes, I do.</p>
<p style="text-align: right;">14</p> <p>1 you a range, if that's -- 2 Q. Sure. 3 A. I think one is around the 2002, 2003 4 timeframe. The second visit was somewhere in the 2003, 5 2009 timeframe. But those -- you know, I could be off 6 on the dates. 7 Q. Have you ever had any consulting or employment 8 relationship with a company called G-DEV? 9 A. No, I have not had any relationship with 10 G-DEV. 11 Q. But you know what that company is? 12 A. Yes. I have heard of that company, yes. 13 Q. Have you ever had occasion to deal with them 14 on behalf of Versata or Trilogy? 15 A. I've dealt with them on behalf of Versata and 16 Trilogy. 17 Q. How, if at all, did you prepare for this 18 deposition here today? I presume you met with lawyers 19 for a while? 20 A. Legal counsel for a while. Apart from that, I 21 spoke to product experts, some of whom work for me, to 22 understand -- understand various aspects of our 23 operations. 24 Q. And which product experts did you talk to? 25 A. Karthik Pandian in particular.</p>	<p style="text-align: right;">16</p> <p>1 Q. Topic 2 is, quote, All licenses covering or 2 relating to DCM code or components of DCM, close quote. 3 Do you believe you could speak for the 4 company on that topic? 5 A. Yes, I do. 6 Q. Topic 3 is, quote, The genesis of the code 7 included in DCM, close quote. 8 Do you believe you could speak for the 9 company on that topic? 10 A. Yes, I do. 11 Q. Topic 4 is, quote, Versata's DCM development, 12 maintenance, and support staffing models and processes, 13 including, without limitation, any efforts to maintain 14 quality and confidentiality of code in DCM, close 15 quote. 16 Do you believe you can speak for the 17 company on that set of topics? 18 A. Yes, I do. 19 Q. Topic 5 is, quote, The structure, features, 20 and functions of DCM, including the relationships of 21 class files to other class files and the relationship 22 of stock DCM code to custom code, close quote. 23 Do you believe you can speak for the 24 company on that topic? 25 A. Yes, I do.</p>

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<p style="text-align: right;">17</p> <p>1 Q. And, finally, Topic 6, quote, Key class files, 2 including those class files essential to operate DCM, 3 close quote. 4 Do you believe you can speak for the 5 company on that topic? 6 A. Yes, I do. 7 Q. Are there any of these topics that today you 8 believe people still associated with Versata are more 9 knowledgeable about than you are? 10 A. There are various experts in the field, but I 11 believe that I can represent all these topics 12 sufficiently well. 13 Q. Is there any particular one or more of these 14 topics where there's a particular person at Versata 15 where you think, "That person knows more about this 16 than I do"? 17 A. No. 18 Q. The first topic listed is escrow materials. 19 Do you know when some version of DCM was first 20 escrowed? 21 A. I don't know the specific date. I believe DCM 22 source code has been escrowed for the benefit of our 23 customers. 24 Q. And do you have any idea when that first 25 occurred?</p>	<p style="text-align: right;">19</p> <p>1 MR. FOSTER: Objection, form. 2 THE WITNESS: Could you clarify that 3 question? 4 Q. (BY MR. LANCASTER) Sure. Consistent with 5 your testimony so far, it's possible that the code was 6 first escrowed yesterday. It's also possible that it 7 was escrowed in 1999, consistent with your testimony so 8 far. That's an extremely broad range of time. And 9 what I'm asking you is whether it really is true that 10 you can't narrow it down anymore than that. 11 A. No. Let me clarify. What I said was the 12 source code was escrowed for the benefit of our 13 customers, and I didn't mention it was escrowed for the 14 benefit of Ameriprise. I do know an instance where we 15 escrowed code for the benefit of one of our customers. 16 Q. And when, approximately, was that? 17 A. It would be the 2009, 2010 timeframe. 18 Q. And have you ever heard of an escrow deposit 19 being made before the 2009, 2010 timeframe? 20 A. I don't -- I don't know. 21 Q. Can you tell me when it was first escrowed for 22 the benefit of Ameriprise specifically? 23 A. Typically for us to escrow software for any 24 customer, Trilogy, the customer, and the escrow 25 services provider company needs to enter into a</p>
<p style="text-align: right;">18</p> <p>1 A. I do not. 2 Q. Do you have any idea when it was first 3 escrowed with a company called Iron Mountain? 4 A. I do not know the date. 5 Q. Do you have any reason to believe that it was 6 escrowed more than three years ago? 7 A. For the first time? 8 Q. Correct. 9 A. I don't know the date, no. 10 Q. So Ameriprise became involved with DCM in 11 1999. It's obviously 2013 today. During that 13- or 12 14-year period is it really the case that you cannot 13 identify any range of time within that entire period 14 that the code was first escrowed? 15 A. No. I -- just -- just clarification. I do 16 know that, you know, we did escrow code for benefit of 17 our customers, but I don't know the specific date. 18 Q. And I'm not asking you now for a specific 19 date, but I think we've established that before this 20 morning it was escrowed, to your understanding, 21 presumably -- at least for the benefit of Ameriprise, 22 it was sometime during or after 1999. 23 What I'm trying to have you tell me is 24 whether you can tell us anything to narrow down that 25 12-, 13-year range of years?</p>	<p style="text-align: right;">20</p> <p>1 three-party agreement. In this -- in the case of 2 Ameriprise, that three-party agreement was not entered 3 for -- based on all the records we could check, 4 which -- which didn't allow -- didn't enable us to 5 escrow source code for Ameriprise. 6 Q. And so then is it the case that, as we sit 7 here today, code has still not been escrowed at Iron 8 Mountain specifically for the benefit of Ameriprise? 9 A. As of yesterday, I believe the three-party 10 agreement was not signed by the three parties. 11 Q. And was it the case, then, that yesterday and 12 today for that reason or any other reason no code -- 13 DCM code has been escrowed for the benefit of 14 Ameriprise? 15 A. Yes, because the -- the agreement was not 16 signed we have not been able to escrow code for 17 Ameriprise. 18 Q. When, to your knowledge, did Versata first 19 tell Ameriprise that it could not escrow the code 20 before an agreement was signed? 21 A. I don't know the specific date. I believe it 22 was in the matter of -- during the course of this 23 lawsuit and, specifically, I would say in the last 24 month to two-month timeframe is my recollection from 25 the -- in the recent past. From 1999, we looked for</p>

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<p style="text-align: right;">21</p> <p>1 records. We don't have records on -- on any -- on any</p> <p>2 signed source code and escrow agreement.</p> <p>3 Q. And so your understanding is that for the</p> <p>4 first time in the last month or two, Versata told</p> <p>5 Ameriprise that it could not escrow code for the</p> <p>6 benefit of Ameriprise until another agreement got</p> <p>7 signed?</p> <p>8 MR. FOSTER: Objection, form.</p> <p>9 THE WITNESS: Yes, I believe that's</p> <p>10 accurate.</p> <p>11 Q. (BY MR. LANCASTER) Have you had any</p> <p>12 communications with Iron Mountain yourself about</p> <p>13 exactly what kind of agreement needs to be signed?</p> <p>14 A. I personally in -- in the case of Ameriprise</p> <p>15 or in general?</p> <p>16 Q. For -- for any purpose.</p> <p>17 A. I did help in escrowing source code for one of</p> <p>18 our customers. As a part of that, I did interact with</p> <p>19 the customer. I don't remember if I interacted with</p> <p>20 Iron Mountain.</p> <p>21 Q. And that was the customer whose code got</p> <p>22 escrowed in the 2009 to 2010 timeframe?</p> <p>23 A. That's correct.</p> <p>24 Q. Which customer was that?</p> <p>25 A. That customer was Pacific Life.</p>	<p style="text-align: right;">23</p> <p>1 Q. Do you know the year?</p> <p>2 A. No, I don't know the specific year.</p> <p>3 Q. In the one instance that you're aware of in</p> <p>4 which DCM was deposited, can you identify more</p> <p>5 specifically exactly what was deposited? And what I'm</p> <p>6 looking for is, I assume, source code, right?</p> <p>7 A. Yes, source code and documentation that goes</p> <p>8 along with DCM.</p> <p>9 Q. In the case of Pacific Life, has only one</p> <p>10 version of DCM been deposited or multiple versions?</p> <p>11 A. I know we did deposit one version that they --</p> <p>12 they deployed DCM to production. After that I do not</p> <p>13 know whether we escrowed additional versions.</p> <p>14 Q. Do you know whether escrow obligations are a</p> <p>15 standard part of agreements that Versata/Trilogy has</p> <p>16 with its DCM customers?</p> <p>17 A. I don't -- I wouldn't call it standard. When</p> <p>18 customers ask for it we include that in the --</p> <p>19 Q. Are you aware of any DCM customers who do not</p> <p>20 have escrow terms in their agreements?</p> <p>21 A. I specifically -- no, I do not know.</p> <p>22 Q. We've been talking about Topic 1, and I may</p> <p>23 return to it later on, but I would like to turn to</p> <p>24 Topic 2, the licenses topic. Do you have any</p> <p>25 understanding of who today owns DCM Version 3.9?</p>
<p style="text-align: right;">22</p> <p>1 Q. And then did that customer sign a separate</p> <p>2 agreement with the escrow agent?</p> <p>3 A. I believe there was a three-party agreement,</p> <p>4 yes.</p> <p>5 Q. And specifically with respect to Release 3.9,</p> <p>6 do you know whether that version of the software has</p> <p>7 ever been escrowed for any customer?</p> <p>8 A. Specifically 3.9, I don't know. I don't</p> <p>9 remember the version we escrowed.</p> <p>10 Q. Are you -- are you aware of more customer than</p> <p>11 just Pacific Life for whom code has been escrowed?</p> <p>12 A. I don't know specifically as -- you know, for</p> <p>13 whom code is escrowed today.</p> <p>14 Q. Do you know approximately or exactly how many</p> <p>15 DCM customers Versata/Trilogy has today?</p> <p>16 A. Approximately nine.</p> <p>17 Q. And do you have any understanding of how many</p> <p>18 of those customers have licensed Version 3.9?</p> <p>19 A. Specifically how many, I don't. But any</p> <p>20 customer who has access to DCM and who -- who purchased</p> <p>21 DCM prior to the release of 3.9 would -- based on their</p> <p>22 legal agreement would have access to it.</p> <p>23 Q. Do you know when 3.9 was first released for</p> <p>24 installation?</p> <p>25 A. I don't know the specific date, no.</p>	<p style="text-align: right;">24</p> <p>1 A. "Who" being which -- which customers?</p> <p>2 Q. No, what company, whether Versata -- some</p> <p>3 Versata company or some other company.</p> <p>4 A. I believe it's Versata or Trilogy.</p> <p>5 Q. And going back to the caption, do you have any</p> <p>6 idea whether it's one of the companies that's listed as</p> <p>7 a plaintiff or some other Versata/Trilogy company?</p> <p>8 MR. FOSTER: And I'm going to object to</p> <p>9 this question as outside of the scope of the topic.</p> <p>10 But you can go ahead and answer.</p> <p>11 THE WITNESS: As I mentioned earlier, all</p> <p>12 these organizations, you know, we worked for -- as</p> <p>13 an -- as an organization we worked with -- you know,</p> <p>14 for or with them. In terms of the legal -- you know,</p> <p>15 what is the relationship, I do not know. I'm not aware</p> <p>16 of the relationship. But it -- but that's -- that's</p> <p>17 how I see it.</p> <p>18 Q. I'm going to ask you to look at an exhibit</p> <p>19 that was marked yesterday Exhibit 2. That's an</p> <p>20 agreement between Versata International, Inc., and</p> <p>21 G-DEV. Have you seen this services agreement before?</p> <p>22 A. Yes, sir.</p> <p>23 Q. Versata International, Inc., is not listed as</p> <p>24 a plaintiff in this case. Do you have any</p> <p>25 understanding as to whether that entity owns the</p>

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<p style="text-align: right;">25</p> <p>1 development work provided by G-DEV?</p> <p>2 MR. FOSTER: And I'm going to object to</p> <p>3 this question as outside the scope of the topic.</p> <p>4 Go ahead and answer.</p> <p>5 THE WITNESS: As I said, I don't know the</p> <p>6 legal entity and the legal structure.</p> <p>7 Q. (BY MR. LANCASTER) Do you have any evidence</p> <p>8 that you're aware of that causes you to believe that</p> <p>9 either of the two specific legal entities that are</p> <p>10 plaintiffs in this case own DCM Version 3.9?</p> <p>11 MR. FOSTER: I'm going to object to the</p> <p>12 question as outside the scope of the topic.</p> <p>13 You can go ahead and answer.</p> <p>14 THE WITNESS: In general, that's my</p> <p>15 understanding, that, you know, either Trilogy or</p> <p>16 Versata owns DCM.</p> <p>17 Q. (BY MR. LANCASTER) But, for instance, you</p> <p>18 don't have any idea which of the entities that are</p> <p>19 plaintiffs might have an ownership interest, correct?</p> <p>20 MR. FOSTER: I'm going to object to that</p> <p>21 question as outside the scope of the topic.</p> <p>22 THE WITNESS: No. As I said,</p> <p>23 specifically which entity owns DCM, I'm not aware of</p> <p>24 that.</p> <p>25 Q. (BY MR. LANCASTER) And, for instance, you</p>	<p style="text-align: right;">27</p> <p>1 question as outside the scope of the topic and object</p> <p>2 as to form.</p> <p>3 THE WITNESS: Have I -- so let me answer</p> <p>4 it this way. Have I seen the -- the legal contract</p> <p>5 that shows DCM owns it? No, I have not seen the legal</p> <p>6 contract. But in the -- as a part of operations, I</p> <p>7 definitely recognize that DCM is owned by Trilogy or</p> <p>8 Versata Software.</p> <p>9 Q. (BY MR. LANCASTER) And not only have you not</p> <p>10 seen such a contract; you don't know whether such a</p> <p>11 contract exists, correct?</p> <p>12 MR. FOSTER: I'm going to object to that</p> <p>13 question as outside the scope of the topic.</p> <p>14 THE WITNESS: If I've not seen the</p> <p>15 contract, I can't say for sure.</p> <p>16 Q. (BY MR. LANCASTER) And, similarly, you've</p> <p>17 never heard anyone at Versata Software, Inc., or</p> <p>18 Versata Development Group, Inc., claim that that --</p> <p>19 either specific entity owns DCM?</p> <p>20 MR. FOSTER: I'm going to object to that</p> <p>21 question as outside the topic.</p> <p>22 THE WITNESS: When you say "claim," do</p> <p>23 you mean in general discussion?</p> <p>24 Q. (BY MR. LANCASTER) In any discussion.</p> <p>25 A. In general discussions, you know, we've heard</p>
<p style="text-align: right;">26</p> <p>1 don't know whether it's Versata International, Inc.,</p> <p>2 that owns DCM, correct?</p> <p>3 MR. FOSTER: I'm going to object to that</p> <p>4 question as outside the scope of the topic.</p> <p>5 THE WITNESS: No, specifically I don't</p> <p>6 know as a legal entity Versata International -- Versata</p> <p>7 International, Inc., owns it. But conceptually, just</p> <p>8 in general practice, I understand.</p> <p>9 Q. (BY MR. LANCASTER) You -- you've probably</p> <p>10 learned before in your career that to lawyers corporate</p> <p>11 distinctions are meaningful, even when they aren't to</p> <p>12 some other people. Is it the case that you have</p> <p>13 provided me any evidence that you're aware of that</p> <p>14 either plaintiff in this case actually owns DCM?</p> <p>15 MR. FOSTER: I'm going to object to that</p> <p>16 question as outside the scope of the topic. I'm also</p> <p>17 going to object as to form.</p> <p>18 THE WITNESS: Could you repeat that</p> <p>19 question, please?</p> <p>20 Q. (BY MR. LANCASTER) Sure. I'm asking you to</p> <p>21 confirm that you have provided me any evidence that you</p> <p>22 possess that would indicate that either Versata</p> <p>23 Software, Inc., or Versata Development Group, Inc.,</p> <p>24 actually owns DCM.</p> <p>25 MR. FOSTER: I'm going to object to that</p>	<p style="text-align: right;">28</p> <p>1 that Trilogy -- Trilogy owns -- Trilogy/Versata owns</p> <p>2 DCM.</p> <p>3 Q. So all that you've heard is that there's some</p> <p>4 Trilogy/Versata entity that you believe owns DCM?</p> <p>5 A. No, I wouldn't characterize it that way. In</p> <p>6 an -- from an operational point of view to myself in</p> <p>7 the organization, we all recognize that it belongs</p> <p>8 to -- you know, DCM is owned by Trilogy/Versata. From</p> <p>9 a legal point of view, I've not validated documents to</p> <p>10 know that that is the case.</p> <p>11 Q. Within the company, do business personnel</p> <p>12 simply ignore the legal distinctions amongst Versata</p> <p>13 Software, Inc., Versata Development Group, Inc., and</p> <p>14 Versata International, Inc.?</p> <p>15 MR. FOSTER: I'm going to object to that</p> <p>16 question as outside the scope.</p> <p>17 THE WITNESS: No, I wouldn't say ignore</p> <p>18 it. From an operational perspective, we are focused on</p> <p>19 servicing our business and -- and running our business.</p> <p>20 From a legal perspective, all the nuances, when</p> <p>21 required, we take counsel of our legal team. At that</p> <p>22 point of time we get information clarified.</p> <p>23 Q. Have you told me everything you know about</p> <p>24 what legal entity owns DCM?</p> <p>25 MR. FOSTER: And I'm going to object to</p>



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<p style="text-align: right;">29</p> <p>1 that question as outside the scope of the topic.</p> <p>2 THE WITNESS: What do you mean</p> <p>3 "everything"? As far as my understanding goes, I have</p> <p>4 mentioned what I know.</p> <p>5 Q. (BY MR. LANCASTER) Thank you. Returning to</p> <p>6 Exhibit 2, you understand, as we discussed before, that</p> <p>7 G-DEV FZ-LLC does development work for some Versata</p> <p>8 entity, correct?</p> <p>9 A. Yes.</p> <p>10 Q. And, in particular -- are you comfortable if I</p> <p>11 just call it G-DEV?</p> <p>12 A. Yes, I do.</p> <p>13 Q. And, in particular, G-DEV did development work</p> <p>14 for DCM Version 3.9, among other versions?</p> <p>15 A. We have done development for DCM.</p> <p>16 Specifically 3.9, I know, but they -- I don't -- I do</p> <p>17 not know, but I know that they've done work for DCM.</p> <p>18 Q. And do you know what year G-DEV started to</p> <p>19 contribute to DCM releases?</p> <p>20 A. I don't know the date. Roughly in the 2006,</p> <p>21 2007 timeframe.</p> <p>22 Q. Please look at Page 4 of Exhibit 2, Section 7,</p> <p>23 "Intangible Property."</p> <p>24 A. Specifically that Page 4?</p> <p>25 Q. Right. It's the page stamped Trilogy 2028 at</p>	<p style="text-align: right;">31</p> <p>1 that testimony?</p> <p>2 MR. FOSTER: Objection, form.</p> <p>3 THE WITNESS: I don't know what</p> <p>4 Mr. Brighton testified. So what is the question?</p> <p>5 Q. (BY MR. LANCASTER) Do you disagree with the</p> <p>6 conclusion that DCM is jointly owned by G-DEV and some</p> <p>7 Versata entity?</p> <p>8 A. If the question is, is DCM jointly owned by,</p> <p>9 you know, G-DEV and Versata, no, I do not agree to that</p> <p>10 statement.</p> <p>11 Q. Do you have any knowledge of any particular</p> <p>12 work product that qualifies as -- and I'm looking again</p> <p>13 at the language of Paragraph 7.2 -- qualifies as having</p> <p>14 been, quote, developed prior to or independently of the</p> <p>15 services for client, close quote?</p> <p>16 A. I don't specifically know that right now if</p> <p>17 anything was developed prior to this agreement.</p> <p>18 Q. Has G-DEV assigned rights to any third-party</p> <p>19 licenses to any Versata entity?</p> <p>20 MR. FOSTER: Objection, form.</p> <p>21 THE WITNESS: Could you repeat that?</p> <p>22 Q. (BY MR. LANCASTER) Sure. Are you aware</p> <p>23 generally that there is third-party software within</p> <p>24 DCM?</p> <p>25 A. Yes, I'm aware that there are third-party</p>
<p style="text-align: right;">30</p> <p>1 the bottom.</p> <p>2 A. Got it.</p> <p>3 Q. So this paragraph discusses ownership of work</p> <p>4 that G-DEV might do. And the part of this that I'm</p> <p>5 interested in is in 7.2, which says -- I'm going to</p> <p>6 skip a little bit at the beginning, quote, To the</p> <p>7 extent that an invention incorporates any software,</p> <p>8 including design, coding, user interfaces, visual</p> <p>9 elements, and data models developed prior to or</p> <p>10 independently of the services for a client, non-custom</p> <p>11 elements, G-DEV shall retain ownership in such</p> <p>12 non-custom elements."</p> <p>13 My first question is --</p> <p>14 A. Just a second. Let me read this.</p> <p>15 Q. Sure. Sure. Take your time.</p> <p>16 A. Yeah, I'm ready.</p> <p>17 Q. My question to you based upon that assignment</p> <p>18 of rights or division of rights between the companies</p> <p>19 is whether -- you know whether DCM Version 3.9 or any</p> <p>20 other version is partially owned by G-DEV?</p> <p>21 A. No, that's not my understanding from this</p> <p>22 statement.</p> <p>23 Q. So as you perhaps have heard, Mr. Brighton</p> <p>24 testified yesterday that his understanding was that</p> <p>25 G-DEV was a joint owner of DCM. Do you disagree with</p>	<p style="text-align: right;">32</p> <p>1 libraries and -- that is used in the development of</p> <p>2 DCM.</p> <p>3 Q. And my question to you is whether G-DEV has</p> <p>4 ever assigned any rights to licenses to third-party</p> <p>5 software to Versata.</p> <p>6 A. So just to --</p> <p>7 MR. FOSTER: Objection, form.</p> <p>8 THE WITNESS: I -- I don't understand</p> <p>9 the -- could you -- when you say "license" I don't</p> <p>10 understand the question. Sorry.</p> <p>11 Q. (BY MR. LANCASTER) Well, you understand that</p> <p>12 frequently third-party software comes subject to</p> <p>13 licenses?</p> <p>14 A. I'm aware of that, yes.</p> <p>15 Q. And you can acquire third-party software</p> <p>16 through a license?</p> <p>17 A. I understand that.</p> <p>18 Q. My question to you is, with respect to any</p> <p>19 such third-party software license whether G-DEV has</p> <p>20 ever assigned any rights to any Versata entity?</p> <p>21 A. In general to any Versata entity?</p> <p>22 Q. Let's start with that, yes.</p> <p>23 A. I don't -- I don't know that they have.</p> <p>24 Q. Have you ever seen any document by which G-DEV</p> <p>25 assigned any rights to any Versata entity apart from</p>

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<p style="text-align: right;">33</p> <p>1 whatever rights are assigned in Exhibit 2?</p> <p>2 A. I've not seen any other document.</p> <p>3 Q. Are you aware of any licenses that G-DEV has</p> <p>4 obtained from any third party who owns third-party</p> <p>5 software incorporated in DCM?</p> <p>6 A. It's a standard practice in software</p> <p>7 development to use third-party libraries. Specifically</p> <p>8 what libraries G-DEV uses, I do not know.</p> <p>9 Q. And my question was whether you're aware of</p> <p>10 G-DEV ever obtaining any license to any third-party</p> <p>11 software incorporated into DCM.</p> <p>12 A. Specifically -- as I said, specifically what</p> <p>13 licenses they -- they have obtained, I do not know.</p> <p>14 Q. And how about generally, whether they've</p> <p>15 obtained any license from any third-party supplier of</p> <p>16 software?</p> <p>17 A. Typically when you render software development</p> <p>18 services a company would need to get access to</p> <p>19 third-party software. Some of them could be for a fee</p> <p>20 or some of them could be an open source setting. So I</p> <p>21 would -- my -- my understanding is that typically</p> <p>22 that's a practice and G-DEV would have practiced that.</p> <p>23 But I specifically don't know what licenses they</p> <p>24 obtained and what they have not.</p> <p>25 Q. And you also don't know whether any rights</p>	<p style="text-align: right;">35</p> <p>1 software companies who have -- owning the license?</p> <p>2 Q. (BY MR. LANCASTER) Correct.</p> <p>3 A. Yes.</p> <p>4 Q. And Section 7 discusses transfer of rights to</p> <p>5 G-DEV's deliverables. Are you aware of anything in</p> <p>6 this or any other contract by which G-DEV transferred</p> <p>7 not just its own rights, but third-party rights as</p> <p>8 well?</p> <p>9 MR. FOSTER: Objection, form.</p> <p>10 THE WITNESS: So if -- just to -- if it's</p> <p>11 a third -- and I don't know the legal language, so I'm</p> <p>12 just asking a question. So if -- if a third party owns</p> <p>13 the -- the license, unless G-DEV is a reseller they</p> <p>14 cannot assign those third-party license to Trilogy.</p> <p>15 So -- so is that your question? I don't understand the</p> <p>16 question.</p> <p>17 Q. (BY MR. LANCASTER) I'm trying to set aside</p> <p>18 what the terms of individual licenses might be and</p> <p>19 whether they're assignable or sub-licensable. My</p> <p>20 question is, whatever the terms of the particular</p> <p>21 third-party license, whether you're aware of any place</p> <p>22 in this or any other agreement by which such</p> <p>23 third-party rights got transferred to any Versata</p> <p>24 entity.</p> <p>25 A. From -- from G-DEV?</p>
<p style="text-align: right;">34</p> <p>1 under those licenses were transferred to any Versata</p> <p>2 entity, correct?</p> <p>3 A. Any license were transferred to Versata</p> <p>4 entity? You mean -- just -- just so that I understand</p> <p>5 this, so whatever development that they -- services</p> <p>6 that they performed for Trilogy/Versata, that is bound</p> <p>7 by this -- this agreement. But beyond that, what they</p> <p>8 have licensed to Versata or not, I can't -- I -- I do</p> <p>9 not know.</p> <p>10 Q. And is there some part of this agreement that</p> <p>11 you think assigns any licensed rights to third-party</p> <p>12 software that G-DEV might have?</p> <p>13 A. Let me read through this.</p> <p>14 Q. Sure. Take your time.</p> <p>15 A. (Witness reading document.)</p> <p>16 From Section 7, my understanding is that</p> <p>17 any work product that G-DEV performs for</p> <p>18 Versata/Trilogy, G-DEV transfers this -- makes -- calls</p> <p>19 that confidential and it's -- it's -- and</p> <p>20 Versata/Trilogy owns the rights for it.</p> <p>21 Q. Well, you can appreciate the difference</p> <p>22 between rights that one party owns and rights that a</p> <p>23 third party owns, correct?</p> <p>24 MR. FOSTER: Objection, form.</p> <p>25 THE WITNESS: "Third party" being other</p>	<p style="text-align: right;">36</p> <p>1 Q. Correct.</p> <p>2 A. Apart from whatever work product is mentioned</p> <p>3 here, no, I don't.</p> <p>4 Q. Are you aware of any rights to third-party</p> <p>5 software that Versata has transferred to its DCM</p> <p>6 customers?</p> <p>7 A. So -- so specifically Versata has many</p> <p>8 software products specifically talking about DCM. In</p> <p>9 the development of DCM, we use number of programming</p> <p>10 languages and libraries -- some of them are external</p> <p>11 libraries -- that we use to develop the software. So,</p> <p>12 yes, there are third-party licenses that are included</p> <p>13 in the development of DCM that gets shipped to our</p> <p>14 customers.</p> <p>15 Q. And do they get shipped to customers as part</p> <p>16 of the documentation?</p> <p>17 A. So let's -- I think it's important for me to</p> <p>18 clarify third-party license and how it's used. We use</p> <p>19 in DCM in general -- I'm not being specific here. We</p> <p>20 use number of open source. Just to clarify, open</p> <p>21 source is developed by open source community, so it's</p> <p>22 available to use once you agree on their -- on the</p> <p>23 terms. We use open source software to develop</p> <p>24 technology. We don't necessarily get that code. We</p> <p>25 get the software, the libraries, based on which DCM</p>



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<p style="text-align: right;">37</p> <p>1 gets developed. And -- and those libraries are made a  2 part of the DCM offering when it's delivered to a  3 customer. And when we say DCM here, I want to be very  4 specific it's DCM Core, which is a -- a software that's  5 made available to all customers of DCM that are  6 currently maintaining a business relationship with  7 Trilogy.  8 Q. Now, specifically with respect to DCM 3.9 and  9 the Ameriprise installation of that product, can you  10 identify any third-party rights that were transferred  11 to Ameriprise specifically?  12 A. Specifically what third-party licenses are  13 included in 3.9, I don't know. In preparation for this  14 deposition I did -- we did understand that there are a  15 set of licenses that are included. And specifically  16 for -- you know, in 3.9 what was shipped, I do not  17 know.  18 Q. Can you identify even a single third-party  19 license whereby rights were transferred to Ameriprise?  20 A. Yes. I can provide one -- one open source  21 library that was used in the development of DCM. That  22 library would have been shipped with DCM. One example  23 is Log4j.  24 Q. And could you spell that for the benefit of  25 everybody, but especially the court reporter?</p>	<p style="text-align: right;">39</p> <p>1 such as Versata to provide additional rights to their  2 customers?  3 A. I don't understand by -- what you mean by  4 "additional rights."  5 Q. Well, an example of an additional right would  6 be the right to obtain the source code upon request.  7 A. Source code to the third-party library?  8 Q. The source code to the third-party software or  9 in some cases related software?  10 MR. FOSTER: Objection, form.  11 THE WITNESS: No. Related software --  12 related software is a -- sorry. It's a very broad  13 term. Open source software by definition is something  14 that Versata as a software developer can access or any  15 entity can access. That's the nature of open source  16 software. But that -- that's my understanding.  17 Q. (BY MR. LANCASTER) Is it Versata's practice  18 to deny to its customers the right to obtain source  19 code to open source software included within DCM?  20 A. So the first point that we need to understand  21 here is that Versata, when delivering software, uses  22 the library that comes along with -- with the open  23 source software. When I say "library," library  24 consists of a machine-readable, you know, set of files.  25 So when software is delivered and that's -- and that</p>
<p style="text-align: right;">38</p> <p>1 A. L-o-g, the No. 4, letter j as in James.  2 THE REPORTER: Thank you.  3 Q. (BY MR. LANCASTER) And it's -- your  4 understanding that that software, Log4j, is subject to  5 some version of the GPL license?  6 MR. FOSTER: Objection, form.  7 THE WITNESS: I don't know the specific  8 term GPL, but I can give you my understanding of open  9 source license. Open source license enables the user  10 of the license to use it for free or without charge as  11 far as the copyright is mentioned. And I don't know  12 the specific legal language. This is my understanding.  13 And it also allows software vendors to package those  14 libraries when it gets shipped to other -- their  15 customers. So the usage of open source software is  16 widely practiced in the software industry and it  17 benefits a lot of customers, and that's what we follow.  18 Q. (BY MR. LANCASTER) And do you have any  19 understanding as to whether licensing terms for at  20 least some open source software confer obligations upon  21 the installer of -- of software such as Versata?  22 A. What are the -- I'm sorry. What are -- could  23 you repeat that?  24 Q. Do you have any understanding as to whether at  25 least some open source license terms require installers</p>	<p style="text-align: right;">40</p> <p>1 third-party library is used there is no need for  2 anybody, specifically a customer, to access the source  3 code of the third-party library. They -- they get to  4 use the third-party library and the machine-readable  5 code which whatever machine they deploy it on reads it.  6 Q. Are you asserting that Versata or companies  7 that develop software for Versata never obtain open  8 source code as opposed to merely machine-readable code?  9 A. Sorry. In the development of the software  10 that --  11 Q. In the development of DCM, are you testifying  12 that Versata never obtains source code from third-party  13 open source suppliers?  14 A. No, I'm not -- I'm not -- I'm not -- I'm not  15 saying we -- we don't see the source code, if that's  16 what your question was. Versata in developing the  17 software has seen third-party source code. When we  18 ship it to the customer we don't ship the source code.  19 We ship the libraries, which are machine-readable code.  20 And in usage of DCM, when a customer uses it, they need  21 to -- by -- by definition need to use it as a library.  22 That's -- that's our position.  23 Q. And my question to you, then, is it Versata's  24 practice to deny to its own customers the right to see  25 the source code that Versata obtained from third</p>

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<p style="text-align: right;">41</p> <p>1 parties and incorporated into DCM?</p> <p>2 A. Could you repeat that question?</p> <p>3 Q. Sure. Is it Versata's practice to deny to its</p> <p>4 customers the right to see the source code for the open</p> <p>5 source software that Versata obtains and incorporates</p> <p>6 into DCM?</p> <p>7 A. In the context of using DCM, we believe that</p> <p>8 we provide sufficient documentation, training and all</p> <p>9 that, all the other benefits -- and maybe I can explain</p> <p>10 what they are -- for customers to use DCM. As a part</p> <p>11 of that, the customers do not have a need to use the</p> <p>12 third party -- the software is built such a way that</p> <p>13 it's not necessary for them to use -- look at the</p> <p>14 source code.</p> <p>15 With that said, third party -- and,</p> <p>16 again, I repeat this -- open source software is</p> <p>17 available for usage generally across the world, and</p> <p>18 it's not Versata's position to -- to -- to regulate</p> <p>19 that part. What gets shipped with DCM we -- and we</p> <p>20 make sure -- we provide the libraries so that DCM can</p> <p>21 be easily used.</p> <p>22 Q. Let me see if I can get at it this way. Has</p> <p>23 Versata ever supplied source code for open source</p> <p>24 software incorporated into DCM to its DCM customers?</p> <p>25 A. So just to understand your question, are you</p>	<p style="text-align: right;">43</p> <p>1 A. No. We -- so any part of DCM -- so I want to</p> <p>2 answer this in a set of ways. A, as I said, Versata</p> <p>3 does not ship the -- our source code. We strongly</p> <p>4 believe that we don't need to ship -- the customers</p> <p>5 don't need our source code to look at it.</p> <p>6 Q. Whatever the law is, whatever the license</p> <p>7 terms are, Versata believes it does not need to ship</p> <p>8 source code; is that correct?</p> <p>9 A. It doesn't have --</p> <p>10 MR. FOSTER: Objection, form.</p> <p>11 Q. (BY MR. LANCASTER) I'm sorry. Go ahead.</p> <p>12 A. No, it doesn't have to ship the source code.</p> <p>13 Q. Thank you. The videographer would like us to</p> <p>14 take a break.</p> <p>15 THE VIDEOGRAPHER: We're off the record,</p> <p>16 9:59.</p> <p>17 (Recess from 9:59 a.m. to 10:11 a.m.)</p> <p>18 THE VIDEOGRAPHER: Stand by. This is</p> <p>19 Tape No. 2. We're back on the record, 10:11.</p> <p>20 Q. (BY MR. LANCASTER) Please look at what was</p> <p>21 yesterday marked as Exhibit 3. That's some responses</p> <p>22 to interrogatories by Versata. And the particular</p> <p>23 response that I'm interested in is response to No. 7,</p> <p>24 which happens to be on Page 7. My first question is</p> <p>25 whether you played any role in providing or helping to</p>
<p style="text-align: right;">42</p> <p>1 saying have we -- has Versata ever included any source</p> <p>2 code -- not library or machine-readable code -- source</p> <p>3 code from a third-party library, open source library,</p> <p>4 in the DCM code?</p> <p>5 Q. Not exactly, no. I'm asking you whether</p> <p>6 Versata has supplied under any circumstances source</p> <p>7 code to open source software to a Versata DCM customer?</p> <p>8 A. No, it's typically a practice that we do not</p> <p>9 ship source code. We ship object code.</p> <p>10 Q. And has Versata ever analyzed the licenses by</p> <p>11 which such open software is supplied to understand</p> <p>12 whether Versata is thereby breaching the terms of the</p> <p>13 open source software license terms?</p> <p>14 A. I believe we've -- you know, during the course</p> <p>15 of our development our development team would have</p> <p>16 reviewed the license terms. I believe we are -- my</p> <p>17 general understanding is that we are all -- we are</p> <p>18 in -- in compliance with the third-party agreements.</p> <p>19 Q. Sitting here today, do you have any</p> <p>20 understanding as to whether Versata is obligated to</p> <p>21 provide source code to its customers upon request?</p> <p>22 A. Source code --</p> <p>23 MR. FOSTER: Objection, form.</p> <p>24 THE WITNESS: -- to?</p> <p>25 Q. (BY MR. LANCASTER) To any part of DCM.</p>	<p style="text-align: right;">44</p> <p>1 provide the answer to Interrogatory No. 7?</p> <p>2 A. I'm sorry. I don't -- what is the question?</p> <p>3 Q. My first question is simply whether you were</p> <p>4 involved in helping the company provide this answer.</p> <p>5 You understand what this document is. So -- so</p> <p>6 Ameriprise asks written questions to Versata and then</p> <p>7 Versata provides written responses.</p> <p>8 A. Okay.</p> <p>9 Q. And so Ameriprise's written question is this</p> <p>10 Item No. 7, "Identify all third-party licensors of any</p> <p>11 components of DCM." And then you see the answer that</p> <p>12 Versata has supplied just below that.</p> <p>13 A. That's right.</p> <p>14 Q. And so my question to you is --</p> <p>15 A. I didn't understand the -- I didn't see the</p> <p>16 question.</p> <p>17 Q. And my question to you is whether you played</p> <p>18 any role in helping Versata decide how to answer that</p> <p>19 question?</p> <p>20 A. I didn't.</p> <p>21 Q. Are you aware of anything that anybody at</p> <p>22 Versata did to try to answer that question completely</p> <p>23 and accurately?</p> <p>24 A. I don't know how this -- who performed this</p> <p>25 answer and how they did it.</p>

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12 (Pages 45 to 48)

<p style="text-align: right;">45</p> <p>1 Q. You see that Versata makes the statement that</p> <p>2 Versata's software retains legal title to most of the</p> <p>3 work done by G-DEV. Can you identify with confidence</p> <p>4 any component of DCM that is owned by some Versata</p> <p>5 entity versus a component owned by G-DEV?</p> <p>6 MR. FOSTER: Objection, form.</p> <p>7 THE WITNESS: Could you clarify that</p> <p>8 question?</p> <p>9 Q. (BY MR. LANCASTER) If you prefer a word other</p> <p>10 than "component" I'm glad to use it. But DCM consists</p> <p>11 of a number of different components. Is that fair?</p> <p>12 A. I would say DCM consists of a number of</p> <p>13 different product -- products or modules.</p> <p>14 Q. Okay. Let's start with the modules then.</p> <p>15 Could you identify any modules that are owned by G-DEV</p> <p>16 on the one hand versus Versata on the other hand?</p> <p>17 A. On specifically the DCM software?</p> <p>18 Q. Right.</p> <p>19 A. My understanding is that DCM -- DCM is fully</p> <p>20 owned by Versata Software.</p> <p>21 Q. And when you say "Versata Software," you don't</p> <p>22 mean to distinguish between Versata Software versus</p> <p>23 Versata Development versus Versata International?</p> <p>24 A. I'm not making a difference, no, Versata and</p> <p>25 Trilogy used interchangeably from an operational</p>	<p style="text-align: right;">47</p> <p>1 performs software development services for Versata.</p> <p>2 Q. And I see that the signer for Accolite is</p> <p>3 Leela Kaza, who also performs some services for</p> <p>4 Versata, correct?</p> <p>5 A. Yes, Leela provides some services to Versata</p> <p>6 individually.</p> <p>7 Q. And so what is your understanding as to what</p> <p>8 contribution -- development contribution, if any,</p> <p>9 Accolite makes to the development of DCM?</p> <p>10 A. Accolite is one of our development partners</p> <p>11 who help in -- provide various services, including</p> <p>12 services developing DCM software.</p> <p>13 Q. Do you know whether Accolite played any role</p> <p>14 with respect to the development of DCM Version 3.9</p> <p>15 specifically?</p> <p>16 A. I specifically don't know whether they --</p> <p>17 Accolite provided development services for 3.9, but</p> <p>18 do know that they provide development services.</p> <p>19 Q. So you see that this agreement is dated</p> <p>20 September 14th, 2010. Does that provide you any help</p> <p>21 in ascertaining whether Accolite provided any</p> <p>22 development services relating to DCM Version 3.9?</p> <p>23 A. Not specifically. As I said, I don't know</p> <p>24 the -- when 3.9 was released.</p> <p>25 Q. Is Accolite a development partner in the same</p>
<p style="text-align: right;">46</p> <p>1 perspective.</p> <p>2 Q. Is there anyone at Versata who is responsible</p> <p>3 for ascertaining which parts of DCM are owned by what</p> <p>4 entity?</p> <p>5 A. That would be our legal group.</p> <p>6 Q. And, in particular, would Lance Jones be</p> <p>7 responsible for that?</p> <p>8 A. I believe Lance Jones is the head of legal</p> <p>9 team.</p> <p>10 Q. And, similarly, would Lance Jones as the head</p> <p>11 of the legal team be the person who is responsible for</p> <p>12 ensuring that all component parts of DCM are properly</p> <p>13 licensed from third parties?</p> <p>14 A. Yes. All -- you know, all legal contracts go</p> <p>15 through our legal team.</p> <p>16 Q. Please look at what we'll mark as Exhibit 32.</p> <p>17 (Exhibit No. 32 marked.)</p> <p>18 (Discussion off the record.)</p> <p>19 Q. (BY MR. LANCASTER) Exhibit 32 is a</p> <p>20 professional services agreement that we were provided</p> <p>21 today between Versata Software, Inc., and Accolite,</p> <p>22 Inc. Do you have any knowledge of what this document</p> <p>23 is?</p> <p>24 A. Yes, it seems to be the professional services</p> <p>25 agreement between Accolite and Versata, and Accolite</p>	<p style="text-align: right;">48</p> <p>1 way that G-DEV is a development partner?</p> <p>2 MR. FOSTER: Objection, form.</p> <p>3 THE WITNESS: When you say "same way,"</p> <p>4 what does that mean?</p> <p>5 Q. (BY MR. LANCASTER) Well, G-DEV supplies code</p> <p>6 development services for DCM, correct?</p> <p>7 A. That is correct.</p> <p>8 Q. And I understood you to say that Accolite also</p> <p>9 provides code development services for DCM?</p> <p>10 A. Yes, they are one of our accommodation</p> <p>11 contracts, yes.</p> <p>12 Q. How do you distinguish between the particular</p> <p>13 work on DCM development that G-DEV does versus the work</p> <p>14 that Accolite does?</p> <p>15 A. From a -- from a business operations</p> <p>16 perspective, they provide -- you know, they develop</p> <p>17 software, various parts of software. And some of them</p> <p>18 could have developed some module or the other. But</p> <p>19 there is no, you know, specific delineation between</p> <p>20 those two vendors.</p> <p>21 Q. Does Accolite consist of more than Leela Kaza</p> <p>22 individually?</p> <p>23 A. Yes, I believe so.</p> <p>24 Q. Do you have any idea of how many people are</p> <p>25 part of Accolite, Inc.?</p>

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13 (Pages 49 to 52)

<p style="text-align: right;">49</p> <p>1 A. I don't have a specific number, no.</p> <p>2 Q. Do you have any approximate number?</p> <p>3 A. I know -- I definitely know that a -- a few of</p> <p>4 them that provide services for us that work with -- in</p> <p>5 my organization from Accolite.</p> <p>6 Q. Can you identify any specific part of DCM for</p> <p>7 which Accolite provided development services?</p> <p>8 A. Specifically, I know one instance where one of</p> <p>9 the Accolite representatives provided -- you know,</p> <p>10 helped in debugging of certain core DCM issues.</p> <p>11 Q. And -- and what module or component did that</p> <p>12 relate to?</p> <p>13 A. It related to DCM compensation engine.</p> <p>14 Q. And can you identify any specific module or</p> <p>15 component of DCM that G-DEV provided development</p> <p>16 services for?</p> <p>17 A. I know that G-DEV worked on developing some of</p> <p>18 the UI -- business UI interface for us, and</p> <p>19 specifically here in the DCM core product.</p> <p>20 Q. Please look at what we will mark Exhibit 33.</p> <p>21 (Exhibit No. 33 marked.)</p> <p>22 Q. (BY MR. LANCASTER) Exhibit 33 is another</p> <p>23 exhibit that we were provided this morning. It's an</p> <p>24 oDesk user agreement stamped Trilogy 2201.</p> <p>25 Incidentally, Exhibit 32 was stamped Trilogy 2194.</p>	<p style="text-align: right;">51</p> <p>1 A. ODesk is a company that provides resources --</p> <p>2 development resources and other resources that -- that</p> <p>3 software development entities can use, and</p> <p>4 Trilogy/Versata has used the service.</p> <p>5 Q. Did Versata use oDesk in the development of</p> <p>6 DCM?</p> <p>7 A. I specifically don't know the example, but in</p> <p>8 general we've used their services. You know, we could</p> <p>9 have used them for DCM services.</p> <p>10 Q. But you don't know with confidence one way or</p> <p>11 the other whether they contributed development work for</p> <p>12 DCM?</p> <p>13 A. Specifically for DCM for development, I don't</p> <p>14 know the specific instance.</p> <p>15 Q. And I assume you also don't know whether oDesk</p> <p>16 provided any development services for DCM 3.9</p> <p>17 specifically?</p> <p>18 A. I specifically -- yeah, I do not know.</p> <p>19 Q. Can you identify any particular person that</p> <p>20 the company deals with at oDesk?</p> <p>21 A. Are you -- sorry. Could you repeat that</p> <p>22 question?</p> <p>23 Q. Is there a particular person at oDesk who is</p> <p>24 primarily responsible for the relationship with Versata</p> <p>25 companies?</p>
<p style="text-align: right;">50</p> <p>1 Do you recognize Exhibit 33?</p> <p>2 A. Yes, I -- I reviewed this as a part of</p> <p>3 preparation for the deposition.</p> <p>4 Q. Now, this document appears not to be signed,</p> <p>5 or at least I didn't see a signature anywhere. Do you</p> <p>6 know whether this agreement is in force?</p> <p>7 MR. FOSTER: Objection, form.</p> <p>8 THE WITNESS: By "in force," do you --</p> <p>9 what do you mean by that?</p> <p>10 Q. (BY MR. LANCASTER) Well, sometimes there's</p> <p>11 just pieces of papers -- pieces of paper with possible</p> <p>12 form agreements floating around and they're not at all</p> <p>13 the same thing as agreements that parties have signed</p> <p>14 and intend to be bound by. And so what I'm getting at</p> <p>15 is whether you have any understanding as to whether</p> <p>16 this is an agreement that Versata understands binds</p> <p>17 Versata?</p> <p>18 MR. FOSTER: Objection, form.</p> <p>19 THE WITNESS: This -- this is a -- this</p> <p>20 is a standard oDesk agreement. I have not seen the</p> <p>21 specific agreement that was signed. But this is a</p> <p>22 standard oDesk agreement that's -- that I've seen</p> <p>23 earlier.</p> <p>24 Q. (BY MR. LANCASTER) Did oDesk supply something</p> <p>25 related to DCM?</p>	<p style="text-align: right;">52</p> <p>1 A. No, I do not know the representative of oDesk</p> <p>2 that works with Trilogy.</p> <p>3 Q. Have you ever dealt with anybody at oDesk</p> <p>4 yourself?</p> <p>5 A. No, I have not.</p> <p>6 Q. Could you describe first generally how Versata</p> <p>7 went about developing the new version of DCM</p> <p>8 represented by 3.9?</p> <p>9 A. When you say "new version" you mean --</p> <p>10 Q. Updated version, whatever phrase that you're</p> <p>11 most comfortable with.</p> <p>12 A. Could you repeat the question?</p> <p>13 Q. I'm asking you to describe generally how</p> <p>14 Versata went about developing Version 3.9 of DCM.</p> <p>15 A. So generally DCM -- DCM gets developed -- the</p> <p>16 features that go into DCM gets developed through a</p> <p>17 combination of -- a combination of factors. A, we look</p> <p>18 at what our customers or customer landscape wants.</p> <p>19 What are the pressing needs? We do an independent</p> <p>20 analysis of what the needs are.</p> <p>21 The second part is, we look at -- we look</p> <p>22 at industry experts and advisors in the industry who --</p> <p>23 for whom we understand the trend in the industry. We</p> <p>24 also look at our competition to see what -- what our</p> <p>25 competitors are working on and what capabilities</p>

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<p style="text-align: right;">53</p> <p>1 they're bringing to the market. And we also listen to</p> <p>2 our customers get customer feedback. And a combination</p> <p>3 of these -- these activities lead to a set of features</p> <p>4 that go into every DCM release. And I believe the same</p> <p>5 process was followed for 3.9.</p> <p>6 Q. And then once you have in mind -- strike that.</p> <p>7 Is the result of that process that you decide what</p> <p>8 features a new version of DCM ought to have?</p> <p>9 A. Yes. Through that process of analysis we</p> <p>10 identify what new features need to be developed in DCM.</p> <p>11 Q. And then after that point, what does the</p> <p>12 company typically do to turn that feature list into</p> <p>13 operating software?</p> <p>14 A. Once we understand the high-level direction</p> <p>15 and features that we need to provide we go through --</p> <p>16 the "we" here being the Trilogy core. The Trilogy</p> <p>17 Development Group goes through analysis of the -- the</p> <p>18 business need, the overall need of the feature. We do</p> <p>19 detailed analysis of how the feature needs to be built</p> <p>20 from a -- from a usability perspective. We also do</p> <p>21 analysis from a technical architectural perspective and</p> <p>22 we identify and build a set of requirements. And once</p> <p>23 those requirements are built, we go through a -- a</p> <p>24 development process, a thorough set of testing. And</p> <p>25 after the testing of the software is done we go through</p>	<p style="text-align: right;">55</p> <p>1 development partner it's going to engage?</p> <p>2 A. Well, there is a thorough on-boarding process</p> <p>3 of developing partners. We look at the capabilities</p> <p>4 they bring to the table. They look at the team that --</p> <p>5 that is responsible for delivery apart from other legal</p> <p>6 and financial ramifications. We go through an</p> <p>7 on-boarding process and then identify who needs to be</p> <p>8 a -- who would be a good development partner for our</p> <p>9 company.</p> <p>10 Q. And in recent years can you name the</p> <p>11 development partners that Versata has relied upon to</p> <p>12 develop code for DCM releases?</p> <p>13 A. One example would be Accolite.</p> <p>14 Q. Others?</p> <p>15 A. G-DEV is one of them.</p> <p>16 Q. Others?</p> <p>17 A. We could have had consultants coming through</p> <p>18 oDesk.</p> <p>19 Q. And you said before oDesk may have contributed</p> <p>20 but you're not sure?</p> <p>21 A. I don't specifically know.</p> <p>22 Q. Any other development partner?</p> <p>23 A. I can't remember off the top of my head</p> <p>24 anybody else.</p> <p>25 Q. And specifically with respect to Version 3.9,</p>
<p style="text-align: right;">54</p> <p>1 other things such as, you know, for quality -- for</p> <p>2 quality improvement and quality measurements, such as</p> <p>3 performance tuning and so on and so forth. And then we</p> <p>4 go through the release process of DCM, and that's --</p> <p>5 that's when -- and then we also have marketing</p> <p>6 activities around that and then gets released.</p> <p>7 Q. How does actual code for a new DCM release get</p> <p>8 written?</p> <p>9 A. What do you mean by "how"?</p> <p>10 Q. Well, Versata today has virtually no direct</p> <p>11 employees, correct?</p> <p>12 A. No direct employees? I don't know.</p> <p>13 Q. A handful?</p> <p>14 A. Yeah, it has got -- it has got multiple strong</p> <p>15 implementation partners that help us develop software.</p> <p>16 Q. And is there any direct employee of Versata or</p> <p>17 any Versata entity that actually writes code for a new</p> <p>18 DCM release?</p> <p>19 A. Any -- you know, I don't know specifically is</p> <p>20 it one or two. There could be, but I'm not aware of</p> <p>21 the number.</p> <p>22 Q. And so in order to generate code Versata has</p> <p>23 to engage a development partner, correct?</p> <p>24 A. Versata engages a development partner.</p> <p>25 Q. And how does Versata go about deciding what</p>	<p style="text-align: right;">56</p> <p>1 can you identify with confidence any particular partner</p> <p>2 that was involved?</p> <p>3 A. Specifically for 3.9, no, I don't know who was</p> <p>4 involved.</p> <p>5 Q. But over the past several years those</p> <p>6 three entities have been the development partners that</p> <p>7 you can think of?</p> <p>8 A. Over the years spanning the last ten years we</p> <p>9 have had, you know, Trilogy employees as well. So it's</p> <p>10 been a combination of teams.</p> <p>11 Q. Let's say over the past five years, have there</p> <p>12 been any others that you can think of besides these</p> <p>13 entities?</p> <p>14 A. Over the last five years we -- we could have</p> <p>15 had some employees. Again, I don't know the specific</p> <p>16 numbers. But this is -- generally speaking, these are</p> <p>17 the partners.</p> <p>18 Q. And is the work of those development partners</p> <p>19 governed by the contracts that we've already looked at</p> <p>20 here today?</p> <p>21 MR. FOSTER: Objection, form. I'm also</p> <p>22 going to object it's outside the scope.</p> <p>23 But you can go ahead and answer.</p> <p>24 THE WITNESS: Could you repeat the</p> <p>25 question?</p>



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<p style="text-align: right;">57</p> <p>1 Q. (BY MR. LANCASTER) Sure. We've looked at --</p> <p>2 today at contracts with Accolite, G-DEV, and oDesk.</p> <p>3 And my question is whether the work that those entities</p> <p>4 perform for DCM is governed by the terms of those</p> <p>5 contracts.</p> <p>6 MR. FOSTER: I'm going to object to form</p> <p>7 again and it's outside the scope.</p> <p>8 But you can go ahead and answer.</p> <p>9 THE WITNESS: In general, yes. There are</p> <p>10 other contracts I do not know, but in general these are</p> <p>11 the contracts that we reviewed.</p> <p>12 Q. (BY MR. LANCASTER) How exactly does Versata</p> <p>13 go out -- go about explaining to its development</p> <p>14 partners what the structure or the features of the work</p> <p>15 that they want the partner to do?</p> <p>16 A. Sure. Sure. Let me answer the question. DCM</p> <p>17 is a large product suite. When we on-board anybody for</p> <p>18 development they go through, A, a qualification process</p> <p>19 in terms of their capabilities. Once they pass that,</p> <p>20 we get the -- we have them go through our DCM training</p> <p>21 material. We also have them go through DCM</p> <p>22 documentation. We also have -- we assign to them</p> <p>23 certain tests that they -- they take that makes them --</p> <p>24 that qualifies them to develop DCM. We also have a --</p> <p>25 a training session on DCM quality, also highlight to</p>	<p style="text-align: right;">59</p> <p>1 description?</p> <p>2 A. There is DCM training material, yes.</p> <p>3 Q. Do you have any idea how long that material</p> <p>4 has existed?</p> <p>5 A. We've had DCM training material for the last,</p> <p>6 you know, ten-plus years in various versions of it.</p> <p>7 Q. Does Versata keep records of all the</p> <p>8 individuals that have undergone training for DCM</p> <p>9 development work?</p> <p>10 MR. FOSTER: I'm going to object as</p> <p>11 outside the scope.</p> <p>12 But you can go ahead and answer.</p> <p>13 THE WITNESS: Of -- I don't know of a</p> <p>14 record where we have maintained records of all training</p> <p>15 that's been performed, no.</p> <p>16 Q. (BY MR. LANCASTER) Does the company maintain</p> <p>17 any record of all the individuals that contributed code</p> <p>18 to a particular version of DCM?</p> <p>19 MR. FOSTER: And I'll object it's outside</p> <p>20 the scope.</p> <p>21 THE WITNESS: Would you repeat that</p> <p>22 question?</p> <p>23 Q. (BY MR. LANCASTER) Sure. Suppose we wanted</p> <p>24 to find out all the individuals who worked on a</p> <p>25 particular version of DCM. Does the company maintain</p>
<p style="text-align: right;">58</p> <p>1 them confidentiality information in that discussion.</p> <p>2 And we also -- and once they've gone through all that</p> <p>3 process they -- they are provided, you know, one or</p> <p>4 more modules in which they work on. We also provide</p> <p>5 specific training on those modules and then they start</p> <p>6 the development process, which is a process on its own.</p> <p>7 Q. And are there documents that establish this</p> <p>8 training you were just describing?</p> <p>9 A. I know there is a set of documents.</p> <p>10 Q. What would you call those documents?</p> <p>11 A. I would say it's more a process that each team</p> <p>12 employs. Specifically, I don't -- I can't -- I don't</p> <p>13 believe there's a documentation. But this is a -- a</p> <p>14 process that all developmental leads know about and</p> <p>15 they follow this.</p> <p>16 Q. Is there any written record that you know of</p> <p>17 of any training that takes place with respect to these</p> <p>18 developers?</p> <p>19 A. Yes. DCM training is a standard training</p> <p>20 material that exists in DCM -- in -- in Versata. And</p> <p>21 that training material -- there are various versions of</p> <p>22 it, but that training material they go through.</p> <p>23 Q. And so if we were to ask today for Versata to</p> <p>24 supply its written training materials for developers of</p> <p>25 DCM there would be a document that fits that</p>	<p style="text-align: right;">60</p> <p>1 any such record?</p> <p>2 MR. FOSTER: I'm going to object as</p> <p>3 outside the scope.</p> <p>4 THE WITNESS: I don't know of a specific</p> <p>5 document that captures all the people that worked on a</p> <p>6 particular version of code DCM.</p> <p>7 Q. (BY MR. LANCASTER) Where does this training</p> <p>8 take place that you were describing?</p> <p>9 A. Training takes place in combination of</p> <p>10 settings, largely through -- you know, of interface.</p> <p>11 Individuals go on the -- go through the training</p> <p>12 material themselves, and in certain cases there could</p> <p>13 be in-person training as well.</p> <p>14 Q. For each of these development partners that</p> <p>15 you identified, is it a representative of the</p> <p>16 development partner who undergoes the training or in</p> <p>17 addition each individual that the development partner</p> <p>18 might use to do development work?</p> <p>19 A. It would be a combination. It could be -- it</p> <p>20 could be we train the trainer. That's one approach.</p> <p>21 In certain cases we train all the members of the team.</p> <p>22 It's a combination.</p> <p>23 Q. Could you provide any information about the</p> <p>24 number of people who were involved -- individuals who</p> <p>25 were involved in the development of, for instance,</p>

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<p style="text-align: right;">61</p> <p>1 Version 3.9?</p> <p>2 A. Can you repeat that question?</p> <p>3 Q. Could -- do you have any knowledge of the</p> <p>4 number of individuals who were involved in writing code</p> <p>5 for Version 3.9?</p> <p>6 MR. FOSTER: I'm going to object as</p> <p>7 outside the scope.</p> <p>8 THE WITNESS: No, I don't know the -- the</p> <p>9 number.</p> <p>10 Q. (BY MR. LANCASTER) And do you have any</p> <p>11 ballpark, whether it's 50, 100, 500?</p> <p>12 A. A range of 50 seems reasonable.</p> <p>13 Q. And -- and would each developer have access to</p> <p>14 DCM source code?</p> <p>15 A. DCM is a large application. Depending on the</p> <p>16 modules they work on they would have access to the</p> <p>17 source code that they need to implement.</p> <p>18 Q. And so does the company divide up access</p> <p>19 rights according to a module for its developers?</p> <p>20 A. We provide access -- password-protected access</p> <p>21 to our source repository. Specifically in the source</p> <p>22 repository we have ability to identify certain modules</p> <p>23 and not provide access to certain modules. But what</p> <p>24 capability -- was that capability specifically</p> <p>25 leveraged? I don't know that I -- I don't know that.</p>	<p style="text-align: right;">63</p> <p>1 for DCM?</p> <p>2 A. Typically source -- the source code management</p> <p>3 system provides that capability. In the past I know</p> <p>4 that we have exercised that. In the recent past have</p> <p>5 we specifically exercised that? I do not know the</p> <p>6 answer to that question.</p> <p>7 Q. Do you have any estimate over the past</p> <p>8 five years, let's say, as to the number of individuals</p> <p>9 who have had access to the DCM source code repository?</p> <p>10 A. No, I specifically do not know how many people</p> <p>11 have had access to it.</p> <p>12 Q. Do you have any reason to believe it's more or</p> <p>13 less than 100 people?</p> <p>14 A. In the range of 100 would seem the right</p> <p>15 number.</p> <p>16 Q. And does the company maintain any record of</p> <p>17 however many people that is?</p> <p>18 A. With all developers, anybody who is developing</p> <p>19 source code or providing any services to</p> <p>20 Trilogy/Versata, we would have a contractual agreement,</p> <p>21 and that would be the source for getting the list of</p> <p>22 other relationships.</p> <p>23 Q. And is there anything with respect to a log-in</p> <p>24 process or a check-in process for the DCM code</p> <p>25 repository that would tell you exactly who obtained</p>
<p style="text-align: right;">62</p> <p>1 Q. And so do you have any knowledge of any</p> <p>2 restrictions that were placed on -- or strike that.</p> <p>3 Do you have any knowledge of any</p> <p>4 restrictions that have been placed on developers for</p> <p>5 DCM in recent years once they get access to the DCM</p> <p>6 code repository that access to some parts of the</p> <p>7 repository is walled off from them?</p> <p>8 MR. FOSTER: Objection, form.</p> <p>9 THE WITNESS: Could you repeat that</p> <p>10 question?</p> <p>11 Q. (BY MR. LANCASTER) That was a poor question.</p> <p>12 Let me try it again.</p> <p>13 You mentioned that there may be a</p> <p>14 capability -- for even a person who has a password</p> <p>15 necessary to get access to the DCM code repository,</p> <p>16 there may be the capability to restrict access to</p> <p>17 limited modules or components, correct?</p> <p>18 A. Yes, that capability exists in the source</p> <p>19 code --</p> <p>20 Q. And my question to --</p> <p>21 A. -- management system.</p> <p>22 Q. I'm sorry. And my question to you was whether</p> <p>23 in recent years you know whether those restrictions and</p> <p>24 that ability to provide restrictions have ever been</p> <p>25 exercised with respect to the people who develop code</p>	<p style="text-align: right;">64</p> <p>1 access to that repository when?</p> <p>2 A. Well, the source code repository on the server</p> <p>3 that it lies on does have -- is protected by password</p> <p>4 protection security. So -- so we could get access of</p> <p>5 who all participated over the years. Specifically in</p> <p>6 what timeframe and what module they contributed to is</p> <p>7 not something that -- I know that it has the access. I</p> <p>8 just don't know whether that software product provides</p> <p>9 that capability.</p> <p>10 Q. Does each individual have a unique password?</p> <p>11 A. There is a password protection policy that we</p> <p>12 follow, and that encourages it to be unique and that --</p> <p>13 the participants follow the process. It's a pretty</p> <p>14 standard process across the industry.</p> <p>15 Q. And is it your understanding that no</p> <p>16 two developers have the same password?</p> <p>17 A. I don't know that. The, you know, password is</p> <p>18 private. It's secret. They could have stumbled upon</p> <p>19 the same thing. I don't know the answer to that</p> <p>20 question.</p> <p>21 Q. The developers get to choose their own</p> <p>22 password?</p> <p>23 A. They have the -- yes, they do.</p> <p>24 Q. Has the company ever made any effort to</p> <p>25 ascertain who has obtained access to the DCM source</p>

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<p style="text-align: right;">65</p> <p>1 code repository over the past five years, let's say?</p> <p>2 A. Could you repeat that question?</p> <p>3 Q. Has the company ever made any effort to</p> <p>4 ascertain who exactly has obtained access to the DCM</p> <p>5 source code repository over the past five years or so?</p> <p>6 MR. FOSTER: Objection, form.</p> <p>7 THE WITNESS: I don't understand. What</p> <p>8 do you mean by "ascertained"?</p> <p>9 Q. (BY MR. LANCASTER) Well, I'm -- I'm still</p> <p>10 trying to figure out whether the company has any way of</p> <p>11 learning who has obtained access to the source code</p> <p>12 repository and when.</p> <p>13 A. So typically all source code repository</p> <p>14 software will have a log of all users that are provided</p> <p>15 access to the system. It's a standard functionality</p> <p>16 that's pretty common. So the administrator of the</p> <p>17 source code repository would have access to all the</p> <p>18 people that have access to the system and what level of</p> <p>19 access.</p> <p>20 Q. And you believe that the company possesses a</p> <p>21 list at any given time of all the people with access to</p> <p>22 the DCM source code repository?</p> <p>23 A. No, I wouldn't characterize it as that. The</p> <p>24 source code repository has that. That captures all the</p> <p>25 users that have access to it. So that source code</p>	<p style="text-align: right;">67</p> <p>1 to prevent one developer from providing his or her</p> <p>2 password to another person?</p> <p>3 A. When you say "providing," could you explain</p> <p>4 that, clarify that?</p> <p>5 Q. Give -- a person has a password. They say to</p> <p>6 somebody else, "Use my password to get access to that</p> <p>7 repository."</p> <p>8 A. So as a typical process it is strictly</p> <p>9 discouraged for anybody to release the password. But</p> <p>10 if a human being passes it on to another human being, I</p> <p>11 would call it an error, but it can happen.</p> <p>12 Q. There's nothing in the system that -- apart</p> <p>13 from a contractual obligation there's nothing that</p> <p>14 prevents one user from doing that for somebody else who</p> <p>15 wants access?</p> <p>16 A. From a system perspective at a given point of</p> <p>17 time there's no restriction. But a system has the</p> <p>18 capability of what they call password expiration and</p> <p>19 renewal wherein the password gets changed, renewed, and</p> <p>20 prompted. So that is one capability that exists. But</p> <p>21 if -- but you can always pass your password to another</p> <p>22 person on plain paper.</p> <p>23 Q. And for a person who has a password giving</p> <p>24 access to the repository, do they have the capability</p> <p>25 of downloading software to wherever they are?</p>
<p style="text-align: right;">66</p> <p>1 repository has that as the list of users that have</p> <p>2 access.</p> <p>3 Q. Well, if the source code repository has a list</p> <p>4 of people with access, surely the company has access to</p> <p>5 that list, doesn't it?</p> <p>6 A. Yes, we could access to that -- that -- that</p> <p>7 software through the administration capability.</p> <p>8 Q. Does some third party host that repository?</p> <p>9 A. Our source code repository's currently hosted</p> <p>10 in cloud source -- CloudForge, F-o-r-g-e. And that is</p> <p>11 a -- a vendor that provides that service.</p> <p>12 Q. How long has CloudForge hosted the DCM source</p> <p>13 code?</p> <p>14 A. CloudForge, I believe, bought a company called</p> <p>15 CVSDude that's used to maintain DCM source code. Since</p> <p>16 when we have hosted our source code in -- in CVSDude I</p> <p>17 do not know.</p> <p>18 Q. And is CVSDude the way it sounds,</p> <p>19 C-V-S-D-u-d-e?</p> <p>20 A. That's correct.</p> <p>21 Q. Are you aware of any mechanism that restricts</p> <p>22 one developer from using a different developer's</p> <p>23 password to get access to the source code repository?</p> <p>24 A. Could you repeat that question?</p> <p>25 Q. Are you aware of any capability of the system</p>	<p style="text-align: right;">68</p> <p>1 A. Could you repeat that question?</p> <p>2 Q. Sure. A developer gets access to the source</p> <p>3 code repository. Can the developer then download for</p> <p>4 use on his own laptop, desktop, server, whatever, the</p> <p>5 source code so that he can work on it?</p> <p>6 A. For the source code they have access on, if</p> <p>7 they have the right credentials they can download it to</p> <p>8 a -- a computer that they choose to do development on,</p> <p>9 yes.</p> <p>10 Q. And is there a difference between the</p> <p>11 credentials that allow someone to download software</p> <p>12 versus the credentials that simply allow somebody to</p> <p>13 look at the source code, or are those the same</p> <p>14 credentials?</p> <p>15 A. So each user has different levels of access.</p> <p>16 Certain users have access only to read only. The</p> <p>17 software provides capability of -- you know, of a level</p> <p>18 of usage where it's just read only. Another access</p> <p>19 is -- another level of access is to read and download;</p> <p>20 another access to read, download, and upload. So</p> <p>21 depending on the access privileges that the -- the --</p> <p>22 the individual has they have rights for them.</p> <p>23 Q. And can you provide any estimate in recent</p> <p>24 years of the number of individuals who would have</p> <p>25 rights to read and download from the source code</p>



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18 (Pages 69 to 72)

<p style="text-align: right;">69</p> <p>1 repository?</p> <p>2 A. I don't know the specific number, no.</p> <p>3 Q. And would that be that 100 or so figure that</p> <p>4 you were talking about perhaps?</p> <p>5 A. Approximately, yes, in that range people would</p> <p>6 have had access to source code.</p> <p>7 Q. And these are people who are all over the</p> <p>8 world, correct?</p> <p>9 A. Depending on where we have -- they -- we</p> <p>10 have -- our partners have identified these products,</p> <p>11 yes.</p> <p>12 Q. And could you identify all of the countries</p> <p>13 where people with access to the DCM source code</p> <p>14 repository live?</p> <p>15 A. Not -- no, not all the countries. But just as</p> <p>16 a background, the way we identify these development</p> <p>17 partners across the country, which includes -- we have</p> <p>18 a bunch -- many of them from the United States as well.</p> <p>19 Depending on the skill set and the capability to</p> <p>20 develop software, we identify people from across the</p> <p>21 world, but I don't have the entire list of countries.</p> <p>22 Q. And can you name some other countries, India</p> <p>23 presumably?</p> <p>24 A. India is one of the countries. China would be</p> <p>25 another. United States definitely.</p>	<p style="text-align: right;">71</p> <p>1 A. I've specifically not seen, you know, a signed</p> <p>2 copy, but I know our -- our agreement template/standard</p> <p>3 agreement that everybody needs to go through.</p> <p>4 Q. And the company imposes on each of its</p> <p>5 development partners the obligation to obtain a</p> <p>6 particular form of signed agreement from its employees</p> <p>7 or contractors?</p> <p>8 A. Typically we have strict confidentiality</p> <p>9 clauses in our agreement. Typically it's a practice</p> <p>10 that we -- and we -- we can enforce that. We rely on</p> <p>11 our customer partners, our implementation partners, to</p> <p>12 enforce that because we work with good, solid</p> <p>13 organizations. In certain cases I know that they</p> <p>14 have -- they have -- they might have such a</p> <p>15 confidentiality clause internally, but I don't know all</p> <p>16 of them.</p> <p>17 Q. So we looked at the agreements for oDESK and</p> <p>18 Accolite and G-DEV. And I could have missed something</p> <p>19 because I haven't had time to go through at least a</p> <p>20 couple of these, but I didn't see any form agreements</p> <p>21 that were prescribed with respect to any of those. Do</p> <p>22 you think that there are agreements with those</p> <p>23 development partners besides the ones we've looked at</p> <p>24 today?</p> <p>25 A. Generally, these are the development partners.</p>
<p style="text-align: right;">70</p> <p>1 Q. United Arab Emirates?</p> <p>2 A. I don't know specifically whether we have</p> <p>3 developers there or not.</p> <p>4 Q. Other Asian countries?</p> <p>5 A. I specifically don't know, but it could be.</p> <p>6 Q. How about any European countries?</p> <p>7 A. I believe we have had some contractors who</p> <p>8 have worked on DCM. Which portion I don't know from</p> <p>9 Europe.</p> <p>10 Q. Do you know if there's been any in</p> <p>11 South America?</p> <p>12 A. I specifically don't know.</p> <p>13 Q. Have you ever seen any individual</p> <p>14 confidentiality agreements signed by any of these</p> <p>15 developers?</p> <p>16 A. Trilogy maintains a standard confidentiality</p> <p>17 agreement that all individuals sign, including myself.</p> <p>18 So I've seen my agreement.</p> <p>19 Q. And how about for these 100 or so people with</p> <p>20 access? Have -- I assume you have access. Do you?</p> <p>21 A. I personally don't have access to the</p> <p>22 repository.</p> <p>23 Q. For these people who -- 100 or so people who</p> <p>24 do have access, have you seen any of their individual</p> <p>25 confidentiality agreements executed by them?</p>	<p style="text-align: right;">72</p> <p>1 Q. And these are the agreements that govern the</p> <p>2 relationship between the Versata companies and the</p> <p>3 development partners?</p> <p>4 MR. FOSTER: Objection, form. Object to</p> <p>5 outside the scope.</p> <p>6 THE WITNESS: Again, generally these are</p> <p>7 the agreements that govern. There could be additional</p> <p>8 ones.</p> <p>9 Q. (BY MR. LANCASTER) Well, do you know whether</p> <p>10 there are additional agreements?</p> <p>11 A. I don't specifically know, but -- but I'm sure</p> <p>12 there are other individual agreements that are in</p> <p>13 place.</p> <p>14 Q. Do you have any understanding as to how</p> <p>15 individual developers get paid for doing code</p> <p>16 development work?</p> <p>17 MR. FOSTER: Objection, outside the</p> <p>18 scope.</p> <p>19 THE WITNESS: Our payment process is --</p> <p>20 it varies, and I specifically don't know what -- the</p> <p>21 payment process for each relationship. It's something</p> <p>22 that our finance department would -- would have more</p> <p>23 details.</p> <p>24 Q. (BY MR. LANCASTER) And do you have any</p> <p>25 understanding as to whether, say, if a development</p>

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<p style="text-align: right;">73</p> <p>1 partner is responsible for a particular module or 2 component, they would just get paid some set fee for 3 completing that module or component? 4 A. Again, it's a very general -- there are 5 various ways, various contracts where you have payment 6 terms. It varies depending on the partnership. 7 Q. And, for instance, you know sitting here how 8 it varies between the three development partners that 9 we discussed? 10 MR. FOSTER: Objection, outside the 11 scope. 12 THE WITNESS: I don't know. 13 Q. (BY MR. LANCASTER) Do you have any knowledge 14 at all as to how individual developers are typically 15 compensated? 16 MR. FOSTER: Objection, outside the 17 scope. 18 THE WITNESS: As I said, the 19 relationships are different. And the way it's paid 20 is -- varies. There are different models that we adopt 21 and it varies. 22 Q. (BY MR. LANCASTER) And you can't generalize 23 at all? 24 A. There are -- there are -- the typical models 25 go from, you know, having a time and material contract,</p>	<p style="text-align: right;">75</p> <p>1 a set of tests to -- to validate requirements are 2 documented. Then when the software is designed, those 3 tests are further extended and they're extended with 4 the design. And then as a part of development of the 5 software, the developer individually writes certain 6 automated tests to validate that it works. And after 7 the development is complete, on successful execution of 8 the test, the software is assembled, which happens over 9 a period of time. And after the software is assembled 10 and we have a complete package we go through another 11 set of tests to validate that it meets the spec. 12 Another -- after the -- the functionality 13 is tested, we also test that the software installs 14 appropriately. After that we also test that it works 15 on the set of platforms it's supposed to work. After 16 that we test that it works at the performance levels 17 that a customer is required to work. These are all the 18 quality assurance steps that we take. 19 Q. And what entity performs those various quality 20 assurance steps after the writing of the code that you 21 were describing? 22 A. Variety of our implementation partners that 23 we -- some of them we have mentioned here provide that 24 service. 25 Q. And are there some implementation partners in</p>
<p style="text-align: right;">74</p> <p>1 a fixed bid contract, and so on and so forth. These 2 are flavors that are fairly practiced industry-wide. 3 That's what we follow. 4 Q. And do you know whether any of those 5 particular flavors were used specifically for DCM 3.9? 6 A. I specifically don't know. 7 Q. Do you have any knowledge as to how many JAR 8 files there are in DCM? 9 A. Just to clarify, JAR files are the Java 10 archiving files. 11 Q. Right. 12 A. I don't know the number, but there are quite a 13 few. 14 Q. And so do you know whether it's more than 200? 15 A. I don't know the number. 16 Q. Could you describe generally a quality control 17 process that Versata applies to work on DCM that is 18 done by its developers? 19 A. First I would like to define quality control. 20 Quality control, in my definition, is an ability for 21 the software to perform the functions based on the 22 specifications to which the software is developed. 23 With that definition of quality control -- quality 24 control, quality control for DCM development starts at 25 the outset. When the requirements have been gathered,</p>	<p style="text-align: right;">76</p> <p>1 addition to ones we've discussed that provide those 2 services? 3 A. No, generally these are the implementation 4 partners. One specific point that we need to mention 5 about quality assurance is -- for us quality assurance 6 is not an afterthought. It's not a process that 7 happens later. It is integrated with our development 8 process. So I wouldn't mention that as two separate 9 terms. It happens from -- right from the outset. 10 Q. Can you identify any particular development 11 partner that is responsible for combining various 12 modules or components that perhaps different partners 13 have worked on to ensure that they communicate properly 14 with each other within DCM? 15 A. Yeah, I wouldn't characterize it as 16 development partners. There's a team of people who 17 develop software, the DCM core software. From time to 18 time the members of the team that focus on core 19 development versus -- versus, you know, certain parts 20 of quality assurance may vary. But I wouldn't say 21 specifically a development partner. In the -- in the 22 pool of developers that work on -- on DCM core there 23 could be certain people that focus on quality assurance 24 more than development. 25 Q. So, again -- and I appreciate the point that</p>

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<p style="text-align: right;">77</p> <p>1 you're making about quality efforts beginning before 2 code is written. But as you can appreciate, I'm 3 focused on after the code is written. Is there a 4 particular individual that you could identify who's 5 generally responsible for quality assurance in terms of 6 the written code performing as it's supposed to, the 7 written code integrating with other modules or 8 components of DCM as it's supposed to?</p> <p>9 A. The reason why I explained our quality 10 assurance process in detail is to highlight the fact 11 that quality assurance happens at every stage and all 12 developers are responsible for it. And certain people 13 put certain rules into their modules. So it's not -- 14 it's not -- we just don't have a separate team, and we 15 found that we -- we develop better quality software if 16 we integrate development testing as an integrated 17 process.</p> <p>18 Q. Could you identify any individual associated 19 with Versata who has ultimate responsibility for 20 quality assurance for a new DCM release?</p> <p>21 A. I believe the development manager was -- the 22 person who is responsible -- was responsible who played 23 the role of development manager would be the ultimate 24 authority of quality of DCM.</p> <p>25 Q. And could you identify that person for</p>	<p style="text-align: right;">79</p> <p>1 years ago David Chow was a development manager. 2 Q. You mentioned that there is -- there are 3 quality assurance efforts to make sure that the 4 software performs according to specifications or 5 requirements generally. I'm not quoting, but that's 6 what I took from what you said. What I'm interested in 7 now is whether there is anyone who reviews completed 8 code to ensure that it doesn't incorporate software to 9 which Versata does not have any rights?</p> <p>10 MR. FOSTER: Objection, form.</p> <p>11 THE WITNESS: So what rights Versata has 12 is determined by our legal team. Once our legal team 13 has determined that, our developers use the software.</p> <p>14 Q. (BY MR. LANCASTER) Are there people on the 15 legal team who are capable of analyzing source code to 16 see where that source code came from?</p> <p>17 A. What does that mean? I don't understand the 18 question.</p> <p>19 Q. I guess what I'm responding to is, I couldn't 20 imagine how a lawyer could possibly be capable of 21 ascertaining from examining source code where that 22 source code came from.</p> <p>23 A. I'm sorry. Why should -- just -- just so that 24 I -- why would you -- I don't understand why one would 25 need to look at the source code.</p>
<p style="text-align: right;">78</p> <p>1 Version 3.9?</p> <p>2 A. For -- specifically for Version 3.9, no.</p> <p>3 Q. Could you identify such a person specifically 4 for any DCM release in recent years?</p> <p>5 A. Chris Strahorn was -- has played the role of 6 development manager over the years.</p> <p>7 Q. And what is his current relationship with the 8 company, if any?</p> <p>9 A. I don't know his current relation. I don't 10 know his -- whether he has a relationship and, if he 11 does, what relationship it is.</p> <p>12 Q. Do you know if he had a relationship with the 13 company at the time of the release of DCM 2012?</p> <p>14 A. I don't know that.</p> <p>15 Q. Do you have any -- could you -- strike that.</p> <p>16 Could you state with confidence what 17 individual had ultimate quality assurance 18 responsibility for DCM 2012?</p> <p>19 A. The name of the individual, no. The 20 development manager who is responsible for DCM 2012 21 would have had the responsibility for that.</p> <p>22 Q. Could you identify any person who's ever had 23 such responsibility over the past decade besides 24 Chris Strahorn?</p> <p>25 A. G. Ramah was a development manager. Many</p>	<p style="text-align: right;">80</p> <p>1 Q. Well, maybe let's start with the easy part of 2 that. I gather you're saying you're not aware of 3 anyone looking at the source code to ensure that 4 included within the source code is not code that 5 violates a third party's rights?</p> <p>6 MR. FOSTER: Objection, form.</p> <p>7 THE WITNESS: Actually, what I'm saying 8 is, I'm not understanding your question.</p> <p>9 Q. (BY MR. LANCASTER) We've got another notice 10 from the videographer that our tape time is about up, 11 so why don't we return to that question after a break.</p> <p>12 A. Okay.</p> <p>13 THE VIDEOGRAPHER: We're off the record, 14 11:08.</p> <p>15 (Recess from 11:08 a.m. to 11:17 a.m.)</p> <p>16 THE VIDEOGRAPHER: Stand by. This is 17 Tape No. 3. We're back on the record, 11:17.</p> <p>18 Q. (BY MR. LANCASTER) We were talking about 19 whether there's any quality control to ensure that a 20 developer has not taken code from some third party and 21 made it a part of DCM when that third party might have 22 rights that are being violated or infringed.</p> <p>23 MR. FOSTER: Objection, form.</p> <p>24 THE WITNESS: By "code," do you mean 25 usage of third-party library? I --</p>

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<p style="text-align: right;">81</p> <p>1 Q. (BY MR. LANCASTER) Use of --</p> <p>2 A. I don't understand the question.</p> <p>3 Q. -- source code owned by a third party.</p> <p>4 MR. FOSTER: Objection, form.</p> <p>5 THE WITNESS: I don't understand that</p> <p>6 question, but let me clarify the process so that --</p> <p>7 from its context. When we -- when we decide to build a</p> <p>8 certain set of features for release of DCM, based on</p> <p>9 what technologies are available outside -- some of it</p> <p>10 could be third-party technologies -- we -- the -- the</p> <p>11 product management, the development manager identify a</p> <p>12 set of third-party libraries we want to use in the --</p> <p>13 in the development of DCM. Once that recommendation is</p> <p>14 made based on, you know, industry analysis and things</p> <p>15 of that, we identify -- we -- the legal team reviews</p> <p>16 and goes through all the legal ramification of</p> <p>17 including that source code. Certain cases the</p> <p>18 financial team -- finance team is -- also could be</p> <p>19 included. And once that's done, the library is -- once</p> <p>20 the -- you know, done being all the -- you know, once</p> <p>21 all that verification and any contracts need to be</p> <p>22 signed, they're signed, and then the development team</p> <p>23 uses the library. And, generally speaking, they use</p> <p>24 only the library and not the source from the library</p> <p>25 because the library performs certain functions.</p>	<p style="text-align: right;">83</p> <p>1 distribution of the machine-readable code, or in -- in</p> <p>2 the -- in other terms you could say class files.</p> <p>3 So when a third-party library is used we</p> <p>4 include -- we include and we leverage those</p> <p>5 machine-readable files. And that is why I believe it's</p> <p>6 great to clarify machine-readable and source code.</p> <p>7 Q. Are you claiming that developers never obtain</p> <p>8 third-party source code to make their development</p> <p>9 easier?</p> <p>10 A. I'm not saying developers never look at source</p> <p>11 code. What I'm saying is developers -- the library as</p> <p>12 it exists, they don't need to use the source code.</p> <p>13 Would the developer have looked at a source code? You</p> <p>14 know, yes, they could have.</p> <p>15 Q. Does Versata do anything to prevent a</p> <p>16 developer in China, India, the Middle East, Europe,</p> <p>17 anywhere else from making his job easier by just</p> <p>18 incorporating third-party software into a module or</p> <p>19 component he's selling to -- indirectly to Versata?</p> <p>20 MR. FOSTER: Objection, form.</p> <p>21 THE WITNESS: Could you repeat that</p> <p>22 question? I --</p> <p>23 Q. (BY MR. LANCASTER) Does Versata do anything</p> <p>24 to try to ensure that an individual developer does not</p> <p>25 incorporate third-party software into code that he then</p>
<p style="text-align: right;">82</p> <p>1 Q. (BY MR. LANCASTER) Well, we've asked in this</p> <p>2 case for any third-party licenses that Versata might</p> <p>3 have, and we didn't get any besides the ones that we've</p> <p>4 looked at here today. Do you think that there are some</p> <p>5 that haven't been given to us?</p> <p>6 A. Which ones have you looked at today? I just</p> <p>7 wanted to verify.</p> <p>8 Q. The three developers.</p> <p>9 A. When -- just to clarify. Third-party library</p> <p>10 could be software that -- libraries that -- that I</p> <p>11 mentioned. And in DCM there are a set of third-party</p> <p>12 libraries that are used. And, yes, there's additional</p> <p>13 material, but, yes.</p> <p>14 Q. See, you have used many, many times a word</p> <p>15 that I have not used, and that is library. Why do you</p> <p>16 use the word library rather than source code?</p> <p>17 A. Yes, that's a great question. Let me explain</p> <p>18 that because that helps set the background.</p> <p>19 When software gets developed by anybody,</p> <p>20 specifically in this case third party, they write</p> <p>21 software or source code in human readable form. Then</p> <p>22 there is a process offered out of the process that gets</p> <p>23 converted into a machine-readable form which gets</p> <p>24 deployed and distributed as software. So when we say</p> <p>25 software gets distributed, typically it's a</p>	<p style="text-align: right;">84</p> <p>1 through his employer supplies to Versata?</p> <p>2 A. So going back to our -- to our -- the process</p> <p>3 of determining what third-party libraries are used,</p> <p>4 when the project development starts we identify what</p> <p>5 third-party tools need to be used. The developers that</p> <p>6 work on a particular module will use those</p> <p>7 third-party -- approved third-party tools. And so</p> <p>8 those are the ones that they would -- they would be</p> <p>9 using.</p> <p>10 Q. But how do you know that they, in fact, do</p> <p>11 that rather than use some other source code that they</p> <p>12 have access to?</p> <p>13 A. Again, we need to be very clear here in source</p> <p>14 versus library. In --</p> <p>15 Q. I'm talking about source code. I'm not</p> <p>16 interested in libraries. I'm talking about source</p> <p>17 code.</p> <p>18 A. And repeat your question, please.</p> <p>19 Q. How do you know that an individual developer</p> <p>20 doesn't take source code from some other third-party</p> <p>21 site?</p> <p>22 A. One -- as -- we spoke about the quality</p> <p>23 assurance process. One of the steps in the quality</p> <p>24 assurance process is something called a code read</p> <p>25 process, a peer code read and a manager code read</p>

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<p style="text-align: right;">85</p> <p>1 process. As a part of that, all -- you know, most of  2 the code -- and there can always be a human error. As  3 a part of that, a peer developer and a senior developer  4 reviews the code -- source code. As a part of that, if  5 he identifies some -- some code that doesn't perform in  6 the DCM work, the DCM structure in our practices, that  7 will be called out as a part of the code read process.  8 Q. Are you aware of any code ever having been  9 rejected by Versata because the inclusion of that code  10 would violate or infringe third-party rights?  11 MR. FOSTER: Objection, outside the  12 scope.  13 THE WITNESS: Again, going back --  14 Q. (BY MR. LANCASTER) That's a yes or no  15 question, sir.  16 A. No, because you're asking a question that's  17 very broad, so I need to explain the context.  18 Q. I'm not interested in the explanation. You --  19 MR. FOSTER: Peter, let him give his  20 answer if he wants to answer the question. Just let  21 him answer it. You can follow up. You can ask him  22 ten times. Just let him answer.  23 MR. LANCASTER: No. As I said, the  24 question was a yes or no question and I will ask this  25 follow-up question.</p>	<p style="text-align: right;">87</p> <p>1 A. It's not a yes or no question.  2 MR. FOSTER: Peter, that question didn't  3 make any sense.  4 MR. LANCASTER: Could you read the  5 question back, please?  6 THE REPORTER: Sure.  7 "Can you identify any third-party owner  8 of code whose code has been rejected by Versata to  9 ensure that that specific third party's rights were not  10 violated?"  11 THE WITNESS: So, again, it's not -- it's  12 not a yes or no question because --  13 Q. (BY MR. LANCASTER) It is absolutely a yes or  14 no question. And if you cannot answer the question  15 tell me that.  16 A. It's not a yes or no question. I -- the third  17 party like -- in third party we use libraries. When we  18 use the library we don't need to use the source code.  19 We use the -- we use the libraries and that's -- that  20 provides the extension for us to do whatever we need to  21 do.  22 Q. Did you answer my question to the best of your  23 ability, sir?  24 A. I did.  25 Q. And you have now provided me all instances in</p>
<p style="text-align: right;">86</p> <p>1 Q. (BY MR. LANCASTER) If there is any occasion  2 in Versata's history where it has ever rejected code  3 provided by a developer on the ground that that code  4 infringed or violated a third party's rights, I would  5 like you to tell me now.  6 MR. FOSTER: Objection, form.  7 THE WITNESS: There have been many  8 occasions wherein a code has been deemed inappropriate  9 for various reasons as a part of code read process.  10 That could be because it is poorly written code because  11 the source code didn't follow the -- didn't follow the  12 right libraries, all that. Specifically do I have --  13 have I looked at proof to see that that has happened at  14 any point of time, I don't have specific proof. But  15 our code read process constitutes of multiple of these  16 steps that are undertaken.  17 Q. (BY MR. LANCASTER) Can you identify any  18 third-party owner of code whose code has been rejected  19 by Versata to ensure that that specific third party's  20 rights were not violated?  21 MR. FOSTER: Objection, form.  22 THE WITNESS: So I need to explain again  23 coming back to the -- the source code.  24 Q. (BY MR. LANCASTER) No, that was a yes or no  25 question, sir.</p>	<p style="text-align: right;">88</p> <p>1 the history of Versata in which third-party code has  2 been rejected because including that code would violate  3 the third party's rights; is that correct?  4 MR. FOSTER: Objection, form. Objection,  5 outside the scope.  6 THE WITNESS: I said I don't -- I don't  7 know all the code read comments that have been provided  8 over the years. I've also mentioned what a code read  9 process is. I've also mentioned that when we include  10 third-party libraries, it is library and not source  11 code. And so these are -- this is my understanding  12 based on the questions you answered.  13 Q. (BY MR. LANCASTER) When Versata obtains work  14 product from a developer, does it obtain source code  15 from that developer?  16 A. If there's a developer we have engaged through  17 one of our partners we do get source code from them,  18 yes.  19 Q. Can you tell me the third-party software that  20 is included within DCM 3.9?  21 A. Specifically DCM 3.9, I don't know the list.  22 Q. Can you tell me any third-party software that  23 has been included in recent releases of DCM?  24 MR. FOSTER: Objection, form.  25 THE WITNESS: I can provide you examples</p>



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23 (Pages 89 to 92)

<p style="text-align: right;">89</p> <p>1 of third-party software that we've included.</p> <p>2 Q. (BY MR. LANCASTER) I would like you to tell</p> <p>3 me as many examples of included third-party software as</p> <p>4 you can.</p> <p>5 A. Xalan.</p> <p>6 Q. And could you spell that, please?</p> <p>7 A. X-a-l-a-n; Xerces, X-e-r-c-e-s; Log4j, L-o-g</p> <p>8 No. 4-j. Ant is another third-party library.</p> <p>9 Q. How do you spell Ant?</p> <p>10 A. A-n-t. Those are the ones that I can remember</p> <p>11 off the top of my head.</p> <p>12 Q. Are you aware of Apache code being included?</p> <p>13 A. Apache is a company that provides open source</p> <p>14 software, and they have multiple packages in there.</p> <p>15 Q. And that open source software is provided</p> <p>16 pursuant to a license, correct?</p> <p>17 A. It has an open source license, yes.</p> <p>18 Q. By the way, are you aware of there being more</p> <p>19 than one type of open source license?</p> <p>20 A. I don't know all the details of what types are</p> <p>21 there. I generally know what the license -- I know</p> <p>22 that they have a license.</p> <p>23 Q. Are you aware of there being some Java code</p> <p>24 within DCM?</p> <p>25 A. Yes.</p>	<p style="text-align: right;">91</p> <p>1 A. No, I don't.</p> <p>2 Q. Are you aware generally of the terms of a CDDL</p> <p>3 license?</p> <p>4 A. No, I don't.</p> <p>5 Q. Are you aware of the terms of the lesser GPL</p> <p>6 license, the LGPL?</p> <p>7 A. I don't.</p> <p>8 Q. And are you aware of the terms of the GPL</p> <p>9 license?</p> <p>10 A. Again, I believe that's -- I have a general</p> <p>11 idea, which I defined earlier, but I don't know the</p> <p>12 specifics, no.</p> <p>13 Q. And -- and is it your understanding that all</p> <p>14 that the GPL license requires is that a copyright</p> <p>15 notice be provided?</p> <p>16 MR. FOSTER: Objection, form.</p> <p>17 THE WITNESS: Again, it's a general</p> <p>18 understanding. I don't know the specifics. I know</p> <p>19 that the product can be redistributed, so that's one of</p> <p>20 the things that it provides. But I don't know the</p> <p>21 specifics.</p> <p>22 Q. (BY MR. LANCASTER) And so, for instance, any</p> <p>23 entity that receives the product is, in turn, entitled</p> <p>24 to redirect it, correct?</p> <p>25 MR. FOSTER: Objection, form.</p>
<p style="text-align: right;">90</p> <p>1 Q. Are you aware of there being Eclipse code</p> <p>2 within DCM?</p> <p>3 A. Yes, Eclipse is a programming modeling tool,</p> <p>4 but I know that we use that.</p> <p>5 Q. Are you aware of there being XimpleWare code</p> <p>6 within DCM?</p> <p>7 A. Could you repeat that term?</p> <p>8 Q. XimpleWare, like Simpleware except the first</p> <p>9 letter is X.</p> <p>10 A. I'm not aware of that particular name.</p> <p>11 Q. Do you know generally what the terms of the</p> <p>12 Apache license are?</p> <p>13 A. Generally, yes. I know two -- two points,</p> <p>14 again generally, is that their product meets -- you</p> <p>15 know, we need to display some copyright information on</p> <p>16 that product during some installation or something of</p> <p>17 that sort. Generally that's my understanding.</p> <p>18 Q. Are you aware of generally the terms of a CPL</p> <p>19 license?</p> <p>20 A. I don't.</p> <p>21 Q. Are you aware generally of the terms of a JGL</p> <p>22 license?</p> <p>23 A. No, I don't.</p> <p>24 Q. Are you aware generally of the terms of an MIT</p> <p>25 license?</p>	<p style="text-align: right;">92</p> <p>1 Q. (BY MR. LANCASTER) Do you understand that</p> <p>2 term?</p> <p>3 MR. FOSTER: Objection, outside the</p> <p>4 scope.</p> <p>5 THE WITNESS: That is a -- I would have</p> <p>6 to refer to our legal team to be able to answer that</p> <p>7 question.</p> <p>8 Q. (BY MR. LANCASTER) You don't know one way or</p> <p>9 the other?</p> <p>10 A. I don't know specifically how it works.</p> <p>11 Q. Please look at what we'll mark as Exhibit 34.</p> <p>12 (Exhibit No. 34 marked.)</p> <p>13 Q. (BY MR. LANCASTER) Exhibit 34 is a Trilogy</p> <p>14 document stamped E 21049 and succession. Have you ever</p> <p>15 seen this document before?</p> <p>16 A. No, I have not.</p> <p>17 Q. And so a Frank, Frank Copus, do you know who</p> <p>18 that is?</p> <p>19 A. Yes, he was working at Versata at some point</p> <p>20 of time.</p> <p>21 Q. Okay. You see from the bottom of this e-mail</p> <p>22 he's saying to Chris Strahom -- Chris Strahom was a</p> <p>23 product manager for DCM?</p> <p>24 A. That is correct.</p> <p>25 Q. He's saying, quote, "Chris, we need to provide</p>

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24 (Pages 93 to 96)

<p style="text-align: right;">93</p> <p>1 a list of open source components present in DCM to</p> <p>2 Waddell &amp; Reed as part of the negotiations. Can you</p> <p>3 send that to me when you have time?" Close quote.</p> <p>4 And then Chris Strahorn says he's posted</p> <p>5 the list, and there is a list of JAR files here.</p> <p>6 Whether or not you're familiar with this document are</p> <p>7 you familiar with -- or are you aware of all these</p> <p>8 types of open source code being within DCM?</p> <p>9 A. I'm not aware of all of them, but I -- you</p> <p>10 know, many of them are very familiar to me.</p> <p>11 Q. And so by your understanding of open source</p> <p>12 rules, any recipient of such code has the right to</p> <p>13 redistribute such code as they see fit; is that</p> <p>14 correct?</p> <p>15 MR. FOSTER: Objection, form. Objection,</p> <p>16 outside the scope.</p> <p>17 THE WITNESS: Would you repeat that</p> <p>18 question, please?</p> <p>19 Q. (BY MR. LANCASTER) By your understanding of</p> <p>20 the requirements of general open source licenses,</p> <p>21 anyone who receives such open source code is entitled</p> <p>22 to redistribute it, correct?</p> <p>23 MR. FOSTER: Objection, form. Objection,</p> <p>24 outside the scope.</p> <p>25 THE WITNESS: Again, I would like to</p>	<p style="text-align: right;">95</p> <p>1 open source licenses you claim that a party to whom</p> <p>2 Versata distributes code can be restricted by Versata</p> <p>3 from redistributing that open source code.</p> <p>4 MR. FOSTER: Objection, form. Objection,</p> <p>5 outside the scope.</p> <p>6 THE WITNESS: Again, Versata does not</p> <p>7 distribute source code. It distributes</p> <p>8 machine-readable code.</p> <p>9 Q. (BY MR. LANCASTER) Do you believe that</p> <p>10 Versata has the right to deprive its users of source</p> <p>11 code when they ask for it when that code is open source</p> <p>12 code?</p> <p>13 MR. FOSTER: Objection, form. Objection,</p> <p>14 outside the scope.</p> <p>15 THE WITNESS: Versata ships source --</p> <p>16 ships class code, class code or machine-readable code,</p> <p>17 which is what our customers are to use. Outside of the</p> <p>18 scope, if a customer goes and gets access to the source</p> <p>19 code from some of these libraries -- anybody can do</p> <p>20 that in the world. That's why it's called -- by</p> <p>21 definition it's open code, open source code.</p> <p>22 Q. (BY MR. LANCASTER) But Versata's business</p> <p>23 model is to deprive its customers of the right to get</p> <p>24 open source code that Versata has used from Versata; is</p> <p>25 that correct?</p>
<p style="text-align: right;">94</p> <p>1 explain this -- the usage of third-party libraries.</p> <p>2 Q. (BY MR. LANCASTER) I'm not really interested</p> <p>3 in that. I'm interested in an answer to my question.</p> <p>4 A. Because they -- understanding of how we</p> <p>5 package this in DCM is important for me -- for me to</p> <p>6 answer that question.</p> <p>7 Q. All right. Provide the information that you</p> <p>8 would like to provide, but briefly, please.</p> <p>9 A. Third-party libraries --</p> <p>10 Q. Let me stop you. I'm not interested in</p> <p>11 libraries. I'm interested in third-party source code.</p> <p>12 I've said that to you several times now.</p> <p>13 A. We don't ship third-party source code. We</p> <p>14 ship third-party libraries.</p> <p>15 Q. I'm not interested in what you ship. I'm</p> <p>16 interested in what you get.</p> <p>17 A. What we -- what we receive from these third</p> <p>18 parties is a library.</p> <p>19 Q. And what you receive from developers.</p> <p>20 MR. FOSTER: Objection, form.</p> <p>21 THE WITNESS: What we receive --</p> <p>22 MR. FOSTER: Is there a question pending?</p> <p>23 MR. BARTON: I guess might be</p> <p>24 distribution of them.</p> <p>25 Q. (BY MR. LANCASTER) In your understanding of</p>	<p style="text-align: right;">96</p> <p>1 MR. FOSTER: Objection, form. Objection,</p> <p>2 outside the scope.</p> <p>3 THE WITNESS: The way I would</p> <p>4 characterize that -- and, no. The way I would</p> <p>5 characterize that is Versata develops a software</p> <p>6 package and it provides all the flexibility and the</p> <p>7 necessary tools for customers to use it. And we</p> <p>8 believe that a customer doesn't need to get access to</p> <p>9 source code; A, the source code being the proprietary</p> <p>10 DCM source code or external library source code for the</p> <p>11 usage of DCM.</p> <p>12 Q. (BY MR. LANCASTER) Do you think that it's</p> <p>13 Versata's job to decide what a customer needs?</p> <p>14 MR. FOSTER: Objection, form. Objection,</p> <p>15 outside the scope.</p> <p>16 THE WITNESS: We are considered experts.</p> <p>17 We are brought in as experts in this industry. We</p> <p>18 provide a very valuable service. Yes, we believe we do</p> <p>19 what is necessary for our customers to do their</p> <p>20 business sufficiently. That's why we've been</p> <p>21 successful at this. And we -- as a part of that, we</p> <p>22 provide guidance on how we need to -- how a customer</p> <p>23 needs to deploy a solution.</p> <p>24 Q. And so when a customer tells you, "I need to</p> <p>25 have access to source code or decompiled code, Versata</p>

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25 (Pages 97 to 100)

<p style="text-align: right;">97</p> <p>1 assumes it knows better what that customer needs than 2 the customer does. Is that what you're saying? 3 MR. FOSTER: Objection, form. Objection, 4 outside the scope. 5 Peter, if you can identify where you 6 think this is inside the scope of your topics I might 7 let him answer it. But we've had like six in a row 8 now. 9 MR. LANCASTER: What we're talking about 10 is licenses relating to DCM code. Versata is breaching 11 open source licenses constantly. That's what we're 12 talking about here. 13 MR. FOSTER: You're asking him questions 14 exclusively about legal opinions relating to these 15 documents and you're asking him not about licenses 16 covering or relating to DCM. You're just pontificating 17 about what you think Versata has done. That's not 18 within the scope of his 30(b)(6). 19 MR. LANCASTER: Well, we have to disagree 20 about that and we also have to disagree about who's 21 pontificating. 22 Could you read my question back, please? 23 THE REPORTER: Sure. 24 "Do you think that it's Versata's job to 25 decide what a customer needs?"</p>	<p style="text-align: right;">99</p> <p>1 to use it. 2 Now, outside of this context, if the 3 customer wants to understand what's in the open source 4 library it is for them to determine, not in this 5 context of DCM. 6 Q. Is it your view that Versata is entitled to 7 take public open source code, put it in DCM, and then 8 call it Versata's secret? 9 MR. FOSTER: Objection, form. Objection, 10 outside the scope. 11 THE WITNESS: Again, open source 12 libraries perform a particular function. We -- in 13 development of DCM software we leverage the libraries 14 to perform a particular function, and that's what we 15 deliver. Source code, whether it be specifically all 16 the proprietary source code of DCM is -- is 17 confidential. In this context we don't have to deliver 18 source code. 19 Q. (BY MR. LANCASTER) That's your legal opinion? 20 A. That is my opinion of running a business. 21 Legal opinion should be asked by -- to an attorney. 22 Q. And whether or not that's legal or illegal, 23 that's what Versata does, right? It refuses to provide 24 the source code to its customers? 25 A. No, sir.</p>
<p style="text-align: right;">98</p> <p>1 MR. LANCASTER: That was a pretty simple 2 question. 3 MR. FOSTER: And very simply outside the 4 scope. 5 THE WITNESS: Customer needs are broad. 6 You'll have to specify what -- in what context you mean 7 by "customer needs." 8 Q. (BY MR. LANCASTER) When a -- when a customer 9 says it needs source code or decompiled code, is it 10 your position that Versata knows better than the 11 customer what it needs? 12 MR. FOSTER: Objection, form. Objection, 13 outside the scope. 14 THE WITNESS: So -- 15 Q. (BY MR. LANCASTER) That was a pretty simple 16 question. And that was a yes or no question too. 17 A. Give me a second. Versata ships DCM product 18 with all the tools necessary. Versata product has 19 multiple products and all the information, the source 20 code, is -- source code that's a part of DCM is 21 proprietary and it's very confidential. The way we use 22 third-party libraries and the modalities in which you 23 use third-party libraries is also confidential. And 24 third-party libraries we ship with -- with DCM if it's 25 open source. In this context the customer doesn't need</p>	<p style="text-align: right;">100</p> <p>1 MR. FOSTER: Objection, form. Objection, 2 outside the scope. 3 THE WITNESS: No, sir. I clearly 4 explained the process of how we distribute developed 5 software. If you want to understand all the legal 6 ramifications and other options you need to talk to 7 legal counsel. To my understanding, across multiple 8 of -- multiple years working for Trilogy, we have 9 complied our legal obligation and we have worked on 10 that. That's based on my general understanding. 11 If we have specific details on the legal 12 aspect we need to contact our legal team. 13 Q. I'm not asking you a legal question. Whatever 14 the law and however illegal it is, Versata's practice 15 is to deprive its customers of source code; is that 16 correct? 17 MR. FOSTER: Objection, form. Objection, 18 outside the scope. And I think this is one completely 19 outside the scope. It's got nothing to do with 20 licenses. You're just saying do we deprive source code 21 or not. 22 MR. LANCASTER: No, no, no. Exact -- 23 MR. FOSTER: So -- 24 MR. LANCASTER: To the contrary. 25 Versata -- it's not any secret. Versata is violating</p>



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26 (Pages 101 to 104)

<p style="text-align: right;">101</p> <p>1 the terms of the code that it incorporates into DCM.  2 That's the issue.  3 MR. FOSTER: That's not what the question  4 relates to. You're asking a --  5 MR. LANCASTER: Yes, it does.  6 MR. FOSTER: -- completely different  7 question.  8 MR. LANCASTER: Could you read the  9 question back, please?  10 THE REPORTER: Sure.  11 "I'm not asking you a legal question.  12 Whatever the law and however illegal it is, Versata's  13 practice is to deprive its customers of source code; is  14 that correct?"  15 THE WITNESS: Did you say illegal?  16 MR. FOSTER: Objection, form. Objection,  17 outside the scope.  18 Q. (BY MR. LANCASTER) I'm not asking you whether  19 it's legal or illegal. It is illegal, but I'm not  20 asking you to -- to opine on that. I'm just asking you  21 to confirm that that's Versata's practice.  22 MR. FOSTER: Objection, form. Objection,  23 outside the scope.  24 THE WITNESS: Versata's practice is to  25 provide software and all the necessary tools along with</p>	<p style="text-align: right;">103</p> <p>1 Q. (BY MR. LANCASTER) I would like you to tell  2 me, yes or no, whether Versata's practice is to deprive  3 its customers of source code.  4 MR. FOSTER: Objection, form. Objection,  5 outside the scope.  6 THE WITNESS: Versata's position is to  7 provide whatever necessary tools for our customers to  8 perform the functions. Versata also deems that the  9 source code it develops is confidential. That's our  10 position.  11 Q. (BY MR. LANCASTER) Have you answered my  12 question as much as you're willing to, sir, under oath?  13 A. This is my understanding and this is my  14 position, yes.  15 Q. Did you answer my question to the best of your  16 ability under oath, sir?  17 A. Yes.  18 Q. Thank you. Please look -- well, we're at our  19 proposed break time. Should we do that?  20 MR. BARTON: Is this a break time for  21 you? Let's do a quick lunch. Be back in 30,  22 40 minutes.  23 THE VIDEOGRAPHER: Off the record, 11:48.  24 (Lunch recess from 11:48 a.m. to 12:35 p.m.)  25 THE REPORTER: Stand by. This is Tape</p>
<p style="text-align: right;">102</p> <p>1 that that make -- that will be beneficial to a  2 customer.  3 MR. LANCASTER: I strike that as  4 nonresponsive.  5 Q. (BY MR. LANCASTER) My question, sir, is, is  6 Versata's practice to deprive its customers of source  7 code to DCM?  8 MR. FOSTER: Objection, form. Objection,  9 outside the scope.  10 THE WITNESS: Versata's practice is to  11 protect -- protect its confidentiality rights.  12 Q. (BY MR. LANCASTER) And there -- and among  13 other things, protect the confidentiality of public  14 open source code that Versata obtains subject to  15 restrictions, correct?  16 MR. FOSTER: Objection, form.  17 THE WITNESS: I've explained this  18 earlier. Let me repeat it again.  19 Q. (BY MR. LANCASTER) I'm not interested in any  20 repetition. I would like an answer to my simple  21 question.  22 MR. FOSTER: And I would you to let my  23 witness answer as he sees fit. If you don't like the  24 answers, I'm sure we'll hear significant argument about  25 it later. Just let him answer the question.</p>	<p style="text-align: right;">104</p> <p>1 No. 4. We're back on the record, 12:35.  2 Q. (BY MR. LANCASTER) Mr. Venkatesan, I would  3 I would like to tell you what I understand from your  4 prior testimony to have you tell me if you agree with  5 this. What I understand you to be saying is that even  6 if code -- source code is obtained from public  7 third-party sources, the way that it's integrated into  8 DCM is considered confidential by Versata?  9 A. Yes.  10 Q. And so that even previously public code  11 because of the integration into DCM is not possible to  12 extricate. Is that fair?  13 A. One clarification. Again, it's -- we don't  14 include source code. We include machine-readable code  15 in DCM.  16 Q. Okay.  17 A. And -- and the way we integrate with -- the  18 way we write our proprietary provider software, which  19 includes how we integrate with this third-party  20 library, is also confidential.  21 Q. Okay. And so when I was making -- strike  22 that.  23 When I was asking the questions about why  24 can't a customer get access to the source code of the  25 open source components of Versata Software the reason</p>

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27 (Pages 105 to 108)

<p style="text-align: right;">105</p> <p>1 in your view why they can't is because it's been 2 integrated into DCM?</p> <p>3 A. The reasons why -- the first thing is, they 4 don't need to because we make it easy for them not to 5 do that. The second part is -- there are three 6 parts -- three components here, the DCM core -- DCM is 7 written in Java language -- the integration to this 8 third party, that's also confidential. And -- and 9 other than that -- and that's what gets shipped to DCM.</p> <p>10 As a user anybody in this world can get 11 access to the source code, which would be source code 12 off this open source software, and they get -- they can 13 get a look at it. That -- everybody has a right. And 14 I don't -- you know, we are not trying to, you know, 15 limit anybody from doing that.</p> <p>16 With respect to DCM we are protecting our 17 source code.</p> <p>18 Q. But even with respect to the open source 19 software that's embedded in DCM, Versata does not 20 supply that in source code form to a customer?</p> <p>21 A. Correct. Everything that we supply is 22 machine-readable libraries.</p> <p>23 Q. And -- and would it be possible for Versata to 24 isolate the portions of DCM that came from open source 25 software and supply that in source code format to the</p>	<p style="text-align: right;">107</p> <p>1 have the same understanding of terms.</p> <p>2 A way of obtaining an approximation of 3 source code, not a perfect approximation, but an 4 approximation of source code is to decompile object 5 code, correct?</p> <p>6 MR. FOSTER: Objection, outside the 7 scope.</p> <p>8 THE WITNESS: Decompilation is a process 9 that is used to look at source code, yeah.</p> <p>10 Q. (BY MR. LANCASTER) And so the product of a 11 decompilation process is not as good as source code, 12 but it's an approximation of source code?</p> <p>13 MR. FOSTER: Objection, outside the 14 scope.</p> <p>15 THE WITNESS: I would agree with that.</p> <p>16 Q. (BY MR. LANCASTER) And you understand that 17 what brings us here today is the view of developers 18 working on site at Ameriprise, that one time or another 19 they needed to obtain some approximation of source code 20 to do their work.</p> <p>21 MR. FOSTER: Objection.</p> <p>22 Q. (BY MR. LANCASTER) That's why decompiling 23 happened.</p> <p>24 MR. FOSTER: Objection, outside the 25 scope.</p>
<p style="text-align: right;">106</p> <p>1 customer?</p> <p>2 MR. FOSTER: Objection, form.</p> <p>3 THE WITNESS: Again, we don't need to do 4 that because what comes from the open source library is 5 a file or a set of files that packages all the 6 machinery part. For the software to work completely 7 integrated with DCM, we need to supply that library. 8 And that's the library what we ship.</p> <p>9 Q. (BY MR. LANCASTER) And is it the case that 10 it's impossible or just very difficult to separate out 11 that code from the custom -- customized code in DCM?</p> <p>12 MR. FOSTER: Objection, form.</p> <p>13 Q. (BY MR. LANCASTER) And that was a poor 14 question.</p> <p>15 Is it -- are you saying that it would be 16 impossible to separate out what started as open source 17 code, I understand got turned into machine-readable 18 code before being shipped to the customer -- are you 19 saying that it would be impossible or just difficult to 20 separate out that code from other code within DCM?</p> <p>21 A. I'm saying it's not necessary to do that.</p> <p>22 Q. Right. And I -- and I would like to get over 23 that because, as you may know, this entire case is 24 premised on the idea that people disagree about what 25 they need, right? So let's make sure our term -- we</p>	<p style="text-align: right;">108</p> <p>1 Q. (BY MR. LANCASTER) You understand that?</p> <p>2 A. Could you repeat that, please?</p> <p>3 Q. The -- what Versata complained about is that a 4 contractor, Infosys specifically, has felt the need for 5 some approximation of source code and has, therefore, 6 decompiled on occasion object code supplied to 7 Ameriprise.</p> <p>8 MR. FOSTER: Objection, outside the 9 scope.</p> <p>10 Q. (BY MR. LANCASTER) You understand that?</p> <p>11 MR. FOSTER: Objection, outside the 12 scope.</p> <p>13 THE WITNESS: I understand the gender of 14 the lawsuit, but what is the question?</p> <p>15 Q. (BY MR. LANCASTER) And so -- and so when you 16 repeatedly say the customer doesn't need it, obviously, 17 here's a customer that disagrees with you, right? And 18 that disagreement has led to this case, right?</p> <p>19 MR. FOSTER: Objection, outside the 20 scope.</p> <p>21 Q. (BY MR. LANCASTER) You understand that?</p> <p>22 MR. FOSTER: Objection, form.</p> <p>23 THE WITNESS: I understand there's a 24 disagreement, yes.</p> <p>25 Q. (BY MR. LANCASTER) And so the premise that</p>

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<p style="text-align: right;">109</p> <p>1 you keep adding "the customer doesn't need it"</p> <p>2 contradicts the entire premise of this case.</p> <p>3 MR. FOSTER: Objection, form. Objection,</p> <p>4 outside the scope.</p> <p>5 Q. (BY MR. LANCASTER) In other words, if --</p> <p>6 everyone agreed with you, we wouldn't be sitting here</p> <p>7 today?</p> <p>8 MR. FOSTER: Objection, form. Objection,</p> <p>9 outside the scope.</p> <p>10 THE WITNESS: And the question is?</p> <p>11 Q. (BY MR. LANCASTER) What I -- frankly, what</p> <p>12 I'm asking you to do is to stop telling me that the</p> <p>13 customer doesn't need to do it, because whether you</p> <p>14 agree with it or not, obviously, there's people</p> <p>15 involved in these lawsuits that strongly disagree with</p> <p>16 that.</p> <p>17 A. I, as a representative --</p> <p>18 MR. FOSTER: Objection, form. Objection,</p> <p>19 form. Objection, outside the scope.</p> <p>20 THE WITNESS: I, as a representative of</p> <p>21 Versata, am stating the policies, procedure, and the</p> <p>22 method in which DCM needs to be deployed. And that's</p> <p>23 why I'm presuming I'm here, and I'm stating my</p> <p>24 position.</p> <p>25 Q. (BY MR. LANCASTER) And the benefit of your</p>	<p style="text-align: right;">111</p> <p>1 THE WITNESS: I don't know the</p> <p>2 competitive pricing difference between Versata and --</p> <p>3 and other vendors. One thing I do know is that we have</p> <p>4 a very qualified and skilled team that can deliver</p> <p>5 projects faster and more efficiently and also build</p> <p>6 technology that can be maintained for a long time.</p> <p>7 Q. (BY MR. LANCASTER) And, again, you appreciate</p> <p>8 that this case exists because there are many people out</p> <p>9 there who disagree with that opinion?</p> <p>10 A. Again, is there a question in that?</p> <p>11 Q. I'm asking you if you understand that basic</p> <p>12 fact about this litigation.</p> <p>13 A. I understand --</p> <p>14 MR. FOSTER: Objection, outside the</p> <p>15 scope.</p> <p>16 Q. (BY MR. LANCASTER) And are you generally</p> <p>17 aware that the hourly cost of Versata consultants is</p> <p>18 two to three times the cost of other consultants?</p> <p>19 MR. FOSTER: Objection, outside the</p> <p>20 scope.</p> <p>21 THE WITNESS: It -- we provide a very</p> <p>22 valuable service.</p> <p>23 Q. (BY MR. LANCASTER) Could you answer that</p> <p>24 question yes or no, please?</p> <p>25 MR. FOSTER: Objection, outside the</p>
<p style="text-align: right;">110</p> <p>1 position that the customer doesn't need the code is</p> <p>2 that the customer is thereby forced to use Versata</p> <p>3 consulting services rather than, for instance, Infosys</p> <p>4 consulting services.</p> <p>5 MR. FOSTER: Objection, form. Objection,</p> <p>6 outside the scope.</p> <p>7 THE WITNESS: No. So Versata Software,</p> <p>8 while we ship the software we provide training, we</p> <p>9 provide documentation, and we also provide consulting</p> <p>10 services that our customers can avail. If a customer</p> <p>11 engages knowledgeable partners they can develop -- and</p> <p>12 others have developed -- implementation without getting</p> <p>13 access to source code. And so it is not my position --</p> <p>14 I'm not -- I have access to multiple customers, so I --</p> <p>15 and other customers have developed this.</p> <p>16 So as a representative of the company and</p> <p>17 as somebody who has worked with DCM in various</p> <p>18 capacity, I believe that we don't need to have access</p> <p>19 to source code.</p> <p>20 Q. (BY MR. LANCASTER) What is the -- to your</p> <p>21 understanding, the approximate difference in cost on an</p> <p>22 hourly basis between Versata consultants to a customer</p> <p>23 and Infosys or other consultants?</p> <p>24 MR. FOSTER: Objection, form. Objection,</p> <p>25 outside the scope.</p>	<p style="text-align: right;">112</p> <p>1 scope.</p> <p>2 THE WITNESS: Generally speaking, yes.</p> <p>3 You know, in -- there are -- there are vendors that</p> <p>4 provide services at a lesser price point from a</p> <p>5 consulting hour prospective. There are consultants</p> <p>6 that provide services that are multiple times more than</p> <p>7 Versata's. So there's a combination.</p> <p>8 Q. (BY MR. LANCASTER) We were looking at</p> <p>9 Exhibit 34 and a list of the open source components</p> <p>10 that were present in DCM from the project manager's</p> <p>11 point of view.</p> <p>12 A. Uh-huh.</p> <p>13 Q. Is there any reason why these components could</p> <p>14 not be provided to customers in source code format if</p> <p>15 Versata chose to do that?</p> <p>16 A. Versata -- Versata's position is they know</p> <p>17 customers don't need to do it and they shouldn't be --</p> <p>18 you know, they wouldn't -- they don't need to do it.</p> <p>19 Q. I've heard you say that many times now, sir,</p> <p>20 but that's not the answer to this or any other question</p> <p>21 I've asked you.</p> <p>22 Would it be possible for Versata to</p> <p>23 supply these open source components in DCM to customers</p> <p>24 in source code format or would they be too integrated</p> <p>25 with other aspects of DCM to be able to do that?</p>

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<p style="text-align: right;">113</p> <p>1 A. Again, source code is multiple pieces. If  2 Versata chose to do that, is it possible -- they can  3 separate software. We can open our vault and show our  4 software to everyone.  5 Q. And -- and could Versata separate out the open  6 source components and provide those to customers in  7 source code format? And what I'm trying to get at, is  8 it impossible to separate out those components from the  9 rest of DCM?  10 A. It's -- it is possible to separate out purely  11 what comes -- comes as third-party library. But in  12 terms of how our source code is integrated with the  13 library is a very -- you know, it's an integral part  14 and the code is well merged.  15 But if you just want to get the source  16 code to a library it's available out on the Internet.  17 You can get access to it.  18 Q. But you can't just pluck it out of DCM?  19 A. It's a very complex product. Plucking out  20 would be a -- a -- would be a loose term to use. But  21 it's not that easy. It's a very complex product.  22 Q. And is it complicated just because of all the  23 connections between this code and other code within  24 DCM?  25 A. Yes, because all these functions have</p>	<p style="text-align: right;">115</p> <p>1 records. Does this exhibit correspond to some Bates  2 number of some document that's been produced?  3 MR. LANCASTER: That I -- that I don't  4 know.  5 MR. FOSTER: Okay.  6 MR. LANCASTER: And -- and it may -- I  7 doubt it. I mean, this information, I'm sure, does,  8 but not in this form.  9 Q. (BY MR. LANCASTER) But I think this makes  10 looking at these packages a little bit easier for  11 everybody that may be saying them all out loud. I'm  12 going to ask you a number of questions about particular  13 things, but the point that I want to make is that as I  14 understand it -- you mentioned dependencies. As I  15 understand it, each succeeding level is -- reflects a  16 dependency from the prior level.  17 So, for instance, if you look down at the  18 bottom of Page 1, Level 2, com.trilogy.fs.dms.awc --  19 A. Uh-huh.  20 Q. -- and then you go up to the first line under  21 Level 1, this is a further breakdown or further set of  22 dependencies from that package. Have you seen this  23 kind of dependency tree before?  24 A. I've not seen this particularly in the way  25 it's printed up. I understand the dependency tree.</p>
<p style="text-align: right;">114</p> <p>1 interdependencies. They all work to serve a purpose.  2 So just pulling out any code is not -- is a -- is a  3 isosteric activity.  4 Q. Could you identify any particular open source  5 code that would be easier to pull out than others or  6 are they all integrated?  7 A. I think they're all integrated.  8 Q. Let me show you Exhibit 35, which will take a  9 little bit of explanation from me.  10 (Exhibit No. 35 marked.)  11 Q. (BY MR. LANCASTER) Exhibit 35 is a printout  12 that we generated showing a number of packages within  13 DCM. And I don't think this is all of the packages,  14 but what I understand is this is a list of, obviously,  15 a pretty large number of packages. And I did not  16 generate this document, but as I understand it, you see  17 these levels that are listed, Level 1, Level 2,  18 Level 3, Level 4, goes up to even Level 7.  19 MR. FOSTER: And, Peter, can I interrupt  20 you? Is this -- is this in production or is it not?  21 MR. LANCASTER: This is part of DCM.  22 So --  23 MR. FOSTER: Okay. But, I mean -- I get  24 that. I'm not going to prevent him from answering  25 questions about it. I'm just interested for my -- my</p>	<p style="text-align: right;">116</p> <p>1 Q. Okay. And so you've seen documents like this  2 before?  3 A. I've seen source code, yes.  4 Q. And what -- what I was interested in asking  5 you about was with respect to a few particular packages  6 whether you could describe briefly in your own terms  7 what that type of package does.  8 A. Sure.  9 Q. And, for instance, about the sixth line down  10 there is a package that refers to a validator. Would  11 you just tell me generally what a validator does within  12 DCM?  13 A. One of the strong suits of DCM is the ability  14 to enforce various business rules across various  15 functions in DCM. And to be able to do that, those  16 rules need to be easily -- you know, easy to implement,  17 flexible, and maintainable. Validator as a concept and  18 as the way it exists in DCM encapsulates and provides  19 the ability to enforce business rules and -- A, in the  20 core product and it's made available to our customers  21 to add additional rules.  22 Q. Okay. About seven or eight lines below that  23 there's a reference -- actually two lines in a row --  24 to loaders. What generally do loaders do in DCM?  25 A. So DCM is an application that sits in an</p>

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<p style="text-align: right;">117</p> <p>1 enterprise and it interacts with multiple other 2 systems. Loader is the -- is the product through which 3 data can be loaded from an external system to DCM. 4 Q. Just below that there's a reference to a 5 transformer. What generally does that do in DCM? 6 A. Transformer is, again, a module that 7 transforms data from one format to another. For 8 example, what -- a format could be gender, 9 Mr. and Mrs. Whatever. In DCM that could be 10 represented as 0123. A transformer translates that 11 data from one form to another. 12 Q. Maybe 15 lines down in the second to last 13 Level 1 category there's a reference to an extractor. 14 What generally does an extractor do within DCM? 15 A. Extractor, again, is a module tool that 16 enables, you know, the users to translate data that 17 resides in DCM, pass it to an external system. 18 Q. By the way, there's a strange-looking package 19 name just above that extractor destination, 20 com.trilogy.transacts.integration.util. 21 A. Util. 22 Q. What is that, do you know? 23 A. Transacts is a module that helps model 24 business process management, business -- and various 25 business processes that needs to be supported in the</p>	<p style="text-align: right;">119</p> <p>1 A. Could you clarify that question? 2 Q. Well, let me step back. How -- how physically 3 is a -- an upgrade such as 3.9 supplied to the 4 customer? 5 A. Let me explain the process of what providing 6 DCM means. DCM ships with one file, largely one file. 7 There are additional documentations. That's provided 8 as the -- as the core product. We also ship an 9 installer to install DCM, which when executed it -- it 10 installs DCM. And then it -- if they want to extend 11 DCM you write the extension portion of it. And then 12 the combination gets deployed to the -- to the user -- 13 or for user. 14 Q. And in what physical form is the -- the 15 release itself and the software that installs it 16 supplied to the customer? Does it come in disks or is 17 it downloadable from an online site, or how does that 18 work? 19 A. Depending on how the customer wants it. We 20 can put it in a disk and he can download it from an 21 online secure system. 22 Q. And do you happen to know how Version 3.9 was 23 supplied to Ameriprise? 24 MR. FOSTER: Objection, outside the 25 scope.</p>
<p style="text-align: right;">118</p> <p>1 insurance and financial services industry. That's the 2 purpose of transacts. 3 Q. What is a parser within DCM? 4 A. Are you referring to a particular line item 5 here or in general? 6 Q. I don't -- I don't know if I'm -- I know I've 7 heard that before. I'm not -- actually, I'm not seeing 8 that in here right now, so I guess I -- until I do find 9 it I guess I'm just asking generally. 10 A. Parsing as a concept is going through whatever 11 you -- whatever you're going through, whether it be 12 a -- a file or -- or database, going through it, you 13 know, looking at the contents of it and potentially 14 transforming it to another form as a general concept. 15 Q. So I gather from what you've said before that 16 this dependency chart kind of illustrates the 17 interdependence of various components of DCM. Is that 18 fair? 19 A. Yes. It gives a purview into that, yeah. 20 Q. And so to a layperson this looks like a highly 21 integrated set of software. And I gather that's the 22 way you regard it too? 23 A. Yes. It is integrated software, yes. 24 Q. Is -- is a DCM version supplied to the 25 customer in a single executable file?</p>	<p style="text-align: right;">120</p> <p>1 THE WITNESS: Specifically Ameriprise, I 2 don't know. But those two methods that I mentioned are 3 generally the way we will -- 4 Q. (BY MR. LANCASTER) Is one more common than 5 the other? 6 A. Online is getting more common nowadays. 7 Q. So I gather that these various packages as are 8 listed on Exhibit 35 communicate with each other. Is 9 there a word, particular word or technical word, that 10 you use to describe the form of communication? 11 A. Java object interactions would be a way to 12 characterize that. 13 Q. And would that be true of, say, all the 14 connections between these various levels on a chart 15 like this? 16 A. It's not all, but that's, you know, one way of 17 doing it. 18 Q. And are there other types of communications 19 besides that? And, actually, would you repeat that for 20 me? 21 A. Java object interaction. 22 Q. And is there any other form of one file 23 calling another or any other form of interaction that 24 you're conscious of being employed within DCM? 25 A. I don't understand what you mean by file</p>



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<p style="text-align: right;">121</p> <p>1 interacting with each other.</p> <p>2 Q. There's numerous class files within DCM, and a</p> <p>3 group of class files might be considered a package such</p> <p>4 as depicted on Exhibit 35, right?</p> <p>5 A. Uh-huh.</p> <p>6 Q. And so what I'm interested in would be how a</p> <p>7 class file communicates with another class file.</p> <p>8 A. The Java runtime library enables interactions</p> <p>9 of Java objects that are converted into class files.</p> <p>10 That's the primary mode of communication. Within</p> <p>11 Java -- within the Java framework there are other modes</p> <p>12 of communication such as RMI. That's one of the other</p> <p>13 ways that they interact.</p> <p>14 Q. Okay. And, say, looking at the examples on</p> <p>15 Exhibit 35, do you happen to know the form of</p> <p>16 communication amongst various levels depicted here?</p> <p>17 A. I -- I would say generally does the Java</p> <p>18 runtime interaction through classes.</p> <p>19 Q. And I gather what you were saying that -- is</p> <p>20 that if you pulled a few packages out of this set of</p> <p>21 packages it would have an effect on other packages</p> <p>22 within DCM?</p> <p>23 A. It would have an effect on how DCM performs</p> <p>24 and doesn't perform.</p> <p>25 Q. Okay. And -- and depending upon the package,</p>	<p style="text-align: right;">123</p> <p>1 document.</p> <p>2 A. It -- generally, yeah. The architectural</p> <p>3 views of one of the documents we ship with DCM.</p> <p>4 Q. And as you maybe heard -- just heard me say,</p> <p>5 this came within the 3.9 release to Ameriprise. Do you</p> <p>6 know if this document was updated for Version 3.9?</p> <p>7 MR. FOSTER: Objection, form.</p> <p>8 THE WITNESS: Could you repeat that</p> <p>9 question?</p> <p>10 Q. (BY MR. LANCASTER) Yes. So you see on the</p> <p>11 cover this says version 3.8. And I'm representing to</p> <p>12 you with secondhand information, not firsthand</p> <p>13 information that this document was included in the</p> <p>14 3.9 release. And so my question to you is, did the</p> <p>15 3.8 version of this document also apply to the</p> <p>16 3.9 version?</p> <p>17 MR. FOSTER: Objection, form.</p> <p>18 THE WITNESS: I don't know whether this</p> <p>19 was shipped with the 3.9.</p> <p>20 Q. (BY MR. LANCASTER) And I guess what I'm</p> <p>21 asking you is whether you're aware of a comparable</p> <p>22 document that is specifically for Version 3.9 rather</p> <p>23 than 3.8?</p> <p>24 A. I don't know.</p> <p>25 Q. Please look at Page 6 of this document. Do</p>
<p style="text-align: right;">122</p> <p>1 pulling a package out might make DCM not function at</p> <p>2 all?</p> <p>3 A. Depending -- yeah. Yes.</p> <p>4 Q. And are there particular packages within DCM</p> <p>5 that you could identify as being more or less important</p> <p>6 in terms of the overall functioning of DCM than others?</p> <p>7 A. No. DCM is a product suite that ships with</p> <p>8 multiple products and modules in it. There are</p> <p>9 different types of classes, but they're all equally</p> <p>10 important for functioning of DCM as a software</p> <p>11 application.</p> <p>12 Q. Please look at what we'll mark as Exhibit 36.</p> <p>13 (Exhibit No. 36 marked.)</p> <p>14 MR. LANCASTER: So to anticipate your</p> <p>15 question, Ben, it is possible that this is within the</p> <p>16 Versata production. The source of this physical</p> <p>17 document was that even though it says Version 3.8, it</p> <p>18 came out of the Version 3.9 documentation. And I</p> <p>19 didn't find -- I didn't look for it myself, obviously,</p> <p>20 but I didn't find a match for it in the Versata</p> <p>21 production, but I couldn't represent that it's not</p> <p>22 there. But, anyway, I don't have a number for it.</p> <p>23 MR. FOSTER: Okay.</p> <p>24 Q. (BY MR. LANCASTER) And I guess the first</p> <p>25 question for you is whether you recognize this</p>	<p style="text-align: right;">124</p> <p>1 you believe that this is generally an accurate</p> <p>2 graphical depiction of the Versata DCM application</p> <p>3 architecture?</p> <p>4 A. Generally, yes.</p> <p>5 Q. And I gather from what you said that each of</p> <p>6 these components is important to DCM?</p> <p>7 A. Each of these components are important to the</p> <p>8 DCM. And also another factor to consider is what</p> <p>9 aspects of it a customer chooses to deploy.</p> <p>10 Q. Okay. And do you know whether Ameriprise</p> <p>11 deployed, for instance, the primary compensation</p> <p>12 manager at the upper right-hand side?</p> <p>13 MR. FOSTER: Objection, outside the</p> <p>14 scope.</p> <p>15 THE WITNESS: Specifically, I don't know.</p> <p>16 Q. (BY MR. LANCASTER) And below that the</p> <p>17 compensation schedule XML file?</p> <p>18 MR. FOSTER: Objection, form. Objection,</p> <p>19 outside the scope.</p> <p>20 THE WITNESS: Specifically, I don't know.</p> <p>21 Q. (BY MR. LANCASTER) When a customer does</p> <p>22 employ those, are those significant components of DCM?</p> <p>23 A. The primary compensation manager and all the</p> <p>24 dependencies are a very important module in DCM.</p> <p>25 Q. In the row just above Versata backbone,</p>

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<p style="text-align: right;">125</p> <p>1 there's reference to a BBXML exporter and a BBXML  2 importer. What are those?  3 <b>A. BBXML importer or exporter is a data  4 transformation tool using which data in XML format can  5 be imported to DCM and exported out of DCM.</b>  6 Q. And are those important components of DCM?  7 <b>A. Yes, it is.</b>  8 Q. And do you know whether those were supplied to  9 Ameriprise?  10 <b>MR. FOSTER: Objection, outside the  11 scope.</b>  12 <b>THE WITNESS: Generally it's shipped with  13 DCM. I don't know specifically if that's being  14 deployed at Ameriprise.</b>  15 Q. (BY MR. LANCASTER) I asked you about the  16 primary compensation manager at the top right, and  17 there's a reference to the primary compensation engine  18 at the lower left. What's the difference between those  19 two things?  20 <b>A. Lower left?</b>  21 Q. So coming down from the Versata backbone line.  22 <b>A. Yeah. Primary compensation -- give me a  23 second. Primary compensation is the umbrella for all  24 that the primary compensation does. One of the  25 toolsets in that is the primary compensation manager</b></p>	<p style="text-align: right;">127</p> <p>1 I'm going to show you a few of these documents. And it  2 may all amount to nothing, but if any of them provide  3 you any more information about that particular one,  4 that would be great.  5 (Exhibit No. 38 marked.)  6 <b>MR. FOSTER: 38, right?</b>  7 <b>MR. LANCASTER: That's right. We just  8 finished with Exhibit 37. Exhibit 38 is a document  9 stamped Trilogy E 22637.</b>  10 By the way, Ben, do you happen to know  11 does E refer to anything?  12 <b>MR. FOSTER: Yes. Documents that are  13 bates labeled Trilogy E should have been produced in  14 native format as opposed to being produced in a  15 single-page TIFF/PDF format.</b>  16 <b>MR. LANCASTER: Got it. Thank you.</b>  17 <b>MR. BARTON: That's impressive.</b>  18 <b>MR. FOSTER: I can't swear to you that  19 that's right, but that's my understanding.</b>  20 <b>MR. LANCASTER: It sounded good. Don't  21 say that.</b>  22 <b>MR. BARTON: It persuaded me. It sounded  23 good to me too, man. I'm buying it.</b>  24 Q. (BY MR. LANCASTER) So here's some more  25 references to that XimpleWare. Can you tell from</p>
<p style="text-align: right;">126</p> <p>1 <b>and compensation schedule extir.</b>  2 Q. Thank you. I have some fat ones here that I  3 want to make sure I don't have to carry back with me.  4 Please look next at Exhibit 37.  5 (Exhibit No. 37 marked.)  6 Q. (BY MR. LANCASTER) Exhibit 37 is a multipage  7 document, the first page stamped Trilogy E 22643. And  8 my question is whether you've seen documents of this  9 type before.  10 <b>A. It's source code, but, yes, I've seen such  11 documents.</b>  12 Q. And so this is source code -- a depiction of  13 source code within DCM?  14 <b>MR. FOSTER: Objection, form.</b>  15 <b>THE WITNESS: I don't -- you know, this  16 seems like source code. I don't specifically know  17 whether it's a part of DCM or not.</b>  18 Q. (BY MR. LANCASTER) I had asked you about the  19 XimpleWare software before. And you see up at the top  20 there is reference to a couple XimpleWare files?  21 <b>A. I see the reference, yes.</b>  22 Q. Can you tell by looking at this any role that  23 XimpleWare plays?  24 <b>A. No, I don't know what XimpleWare does.</b>  25 Q. So I'm particularly curious about that one, so</p>	<p style="text-align: right;">128</p> <p>1 looking at this what that XimpleWare does?  2 <b>A. I don't know what XimpleWare does.</b>  3 Q. Okay. So the last of this line of half a  4 dozen or so XimpleWare references refers to X path  5 parse exception. Does that description mean anything  6 to you?  7 <b>A. Sorry. Which line is this on the --</b>  8 Q. So you see there's about a half dozen  9 XimpleWare files or -- what is the proper term for  10 these? Would you call these files?  11 <b>A. These are class files.</b>  12 Q. Class files.  13 <b>A. Sorry. Source code. This is called source  14 code.</b>  15 Q. Okay. So -- so --  16 <b>MR. FOSTER: And can I just clarify that?</b>  17 Were you -- were you asking him about the particular  18 lines here that say XimpleWare or were you asking about  19 the whole document he's holding?  20 <b>MR. LANCASTER: Well, if the answer is  21 different I would be glad to hear both. But I was  22 focused on the XimpleWare.</b>  23 <b>THE WITNESS: I don't know what  24 XimpleWare is and I don't know what this file does.</b>  25 Q. (BY MR. LANCASTER) Okay. And does the</p>

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<p style="text-align: right;">129</p> <p>1 description X path parse exception mean anything to 2 you? 3 A. That means it's a parse or it's doing some 4 parsing. That's the general understanding I have. 5 Q. But you can't tell from looking at this, at 6 least at this moment, what the parsing relates to? 7 A. No, I've -- I've not been in coding for a long 8 time, so I don't -- 9 Q. Got it. And I'm beginning to have a guess as 10 to where this is going to end up, but -- 11 (Exhibit No. 39 marked.) 12 Q. (BY MR. LANCASTER) I'm handing you 13 Exhibit 39, which is a very similar-looking document, 14 stamped Trilogy E 139896. And you see some more 15 references to XimpleWare there. Does that provide you 16 anymore information? 17 A. No, I actually don't know what XimpleWare 18 does. 19 Q. Okay. Fair enough. Maybe I'll save you the 20 trouble of marching through more of these things. 21 A. Can I request for a break? 22 Q. Pardon me? 23 A. Can I request for a break? 24 Q. Sure. 25 THE VIDEOGRAPHER: We're off the record.</p>	<p style="text-align: right;">131</p> <p>1 happening in this communication? 2 A. Let me have a look at it. 3 The one addition information I can 4 provide is CSR is one of the concepts in DCM. But 5 other than that, I don't know what specifically this 6 file does. 7 Q. So a similar set of questions for what we'll 8 mark as Exhibit 41. 9 (Exhibit No. 41 marked.) 10 Q. (BY MR. LANCASTER) Can you tell me anything 11 about what this document is? 12 A. Again, it's -- it's got a -- a concept that's 13 familiar to me, which is the appointment extractor 14 spec. XML, which, I understand, would be an 15 extractable deployment, but I don't know, again, the 16 specifics of these files. 17 Q. Okay. And does looking at this one give you 18 any understanding as to why this information is going 19 from one location to Mr. Jasrotia? 20 A. I don't. 21 (Exhibit No. 42 marked.) 22 Q. (BY MR. LANCASTER) Please look at Exhibit 42. 23 The same question. Can you tell me anything about that 24 document? 25 A. Yep. In this -- earlier we -- the document</p>
<p style="text-align: right;">130</p> <p>1 1:13. 2 (Recess from 1:13 p.m. to 1:22 p.m.) 3 THE VIDEOGRAPHER: This is Tape No. 5. 4 We're back on the record, 1:22. 5 (Exhibit No. 40 marked.) 6 Q. (BY MR. LANCASTER) Please look at what's been 7 marked Exhibit 40. Exhibit 40 is a document stamped 8 Trilogy E 166964. And my question is simply, can you 9 tell what this document is? It appears to have maybe 10 some more source code in it. But beyond that, can you 11 tell anything? 12 A. The -- the term CSR is a term licensed 13 classes -- license line enumerations. They are 14 concepts that I'm aware of. 15 Q. I'm sorry. They're concepts that what? 16 A. That I'm aware of. I know those concepts. 17 Q. Okay. 18 A. Specifically what this file does, I don't 19 know. 20 Q. And does the address "no reply@codetion.com 21 mean anything to you? 22 A. No, it doesn't. I -- 23 Q. And Tushar Jasrotia is a developer at Versata? 24 A. He is a consultant at Versata. 25 Q. Okay. But I gather you can't tell what's</p>	<p style="text-align: right;">132</p> <p>1 had CSR. This has CAR, which is another concept in our 2 PR module in DCM. That's what I can -- 3 Q. And does the heading for this document mean 4 anything to you, "SVN Notification, Financial Services. 5 AMFAM has been changed by Tam" Shitolwi (phonetic). 6 A. SVN is the source code repository, so I would 7 imagine this is a -- my -- my guess is that it's -- 8 it's a notification from SVN. This -- this is source 9 code system. 10 Q. And what exactly do those letters stand for 11 that -- that mean the source code repository? 12 A. I don't know the specific -- 13 Q. Please look at what we'll mark Exhibit 43. 14 (Exhibit No. 43 marked.) 15 Q. (BY MR. LANCASTER) And same question. Can 16 you tell me anything about this document? 17 A. It seems to be some communication that's 18 happened between a set of parties. I don't know -- I 19 don't know about this and I haven't seen this e-mail. 20 Q. But just communications between people at 21 Versata and people elsewhere about presumably trying to 22 deal with some issue? 23 A. Yeah, I'll concur with that. 24 Q. Same question for what we'll mark as 25 Exhibit 44.</p>



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34 (Pages 133 to 136)

<p style="text-align: right;">133</p> <p>1 (Exhibit No. 44 marked.)</p> <p>2 Q. (BY MR. LANCASTER) Any understanding of what</p> <p>3 this issue is?</p> <p>4 A. Let me actually read through these -- this</p> <p>5 thread. I can see if I know what --</p> <p>6 Q. Sure. Take your time.</p> <p>7 A. Assumably from the AMPF e-mail address, it</p> <p>8 seems to be a communication between certain parties at</p> <p>9 Ameriprise and the -- from the thread it seems like</p> <p>10 they're debugging an issue. And I've not seen this</p> <p>11 communication either.</p> <p>12 Q. And are you generally aware that in terms of</p> <p>13 debugging issues, on occasion there were times that</p> <p>14 programmers at Infosys decompiled DCM files?</p> <p>15 MR. FOSTER: Objection, outside the</p> <p>16 scope.</p> <p>17 THE WITNESS: I'm aware of that.</p> <p>18 Q. (BY MR. LANCASTER) And is it the case that a</p> <p>19 certain amount of decompiling goes on at every -- or</p> <p>20 virtually every DCM customer?</p> <p>21 MR. FOSTER: Objection, outside the</p> <p>22 scope.</p> <p>23 THE WITNESS: No. The way I would say</p> <p>24 that is that decompiling source code is not a practice</p> <p>25 that needs to be followed by anyone. But are there</p>	<p style="text-align: right;">135</p> <p>1 Pacific Life, the customer. When I see in this now</p> <p>2 specifically talking about all customer deployment,</p> <p>3 some amount of this happens is this here is referring</p> <p>4 to the customer developer wanting to look at -- you</p> <p>5 know, go through the source code.</p> <p>6 Q. And this particular decompiling happened at</p> <p>7 Pacific Life?</p> <p>8 A. I'm not --</p> <p>9 MR. FOSTER: Objection, form.</p> <p>10 THE WITNESS: I'm -- I'm not aware that</p> <p>11 it did happen. As soon as we got a whiff of that it</p> <p>12 was escalated to me, it escalated to my boss, and then</p> <p>13 it was escalated to the entire management team of the</p> <p>14 customer.</p> <p>15 Q. (BY MR. LANCASTER) And who was your boss at</p> <p>16 this time?</p> <p>17 A. Leela Kaza.</p> <p>18 Q. But Leela Kaza is no longer your boss, right?</p> <p>19 A. Well, I -- I report to two people.</p> <p>20 Q. Please look at what we'll mark as Exhibit 46.</p> <p>21 (Exhibit No. 46 marked.)</p> <p>22 Q. (BY MR. LANCASTER) Exhibit 46 with a top date</p> <p>23 of June 5th, 2009, an e-mail entitled "Possible Legal</p> <p>24 Issue," stamped Trilogy E 110890. And that's your</p> <p>25 e-mail in the middle of this document?</p>
<p style="text-align: right;">134</p> <p>1 cases where the decompilation happened, yes, that has</p> <p>2 happened.</p> <p>3 Q. (BY MR. LANCASTER) Please look at what we'll</p> <p>4 mark as Exhibit 45.</p> <p>5 (Exhibit No. 45 marked.)</p> <p>6 Q. (BY MR. LANCASTER) Exhibit 45 is an e-mail</p> <p>7 string that includes an e-mail from you, right?</p> <p>8 A. Yes.</p> <p>9 Q. And your e-mail says to Leela Kaza, "In all</p> <p>10 customer deployment, some amount of this happens."</p> <p>11 What were you referring to there?</p> <p>12 A. There's a chain of events -- I'll give you</p> <p>13 a -- the background of what happened here was, during</p> <p>14 one of the knowledge transfer sessions one of the</p> <p>15 junior developers or consultants who work -- who works</p> <p>16 in my group came across that one of the client</p> <p>17 developers had turned on decompilation in one of their</p> <p>18 development. As a part of that, he reported this issue</p> <p>19 to me and -- and -- you know, and he had expressed --</p> <p>20 and the client developer expressed that -- you know,</p> <p>21 wanting to have -- just for reference purposes him</p> <p>22 needing that.</p> <p>23 And when I say -- and then after that I</p> <p>24 escalated the issue. And this issue got escalated to</p> <p>25 the senior management, the highest level as possible at</p>	<p style="text-align: right;">136</p> <p>1 A. Yes.</p> <p>2 Q. And is this also talking about decompiling?</p> <p>3 A. Let me go through the whole thread.</p> <p>4 Q. Sure.</p> <p>5 A. Yeah, this was the thread I was referring to</p> <p>6 earlier. Aakash Jain was the junior developer who was</p> <p>7 working with the client developer, Don. I don't know</p> <p>8 his last name or don't remember his last name. He had</p> <p>9 turn on the decompiler in their environment. And he</p> <p>10 just wants to have -- you know, the developer wanted to</p> <p>11 have this for internal reference.</p> <p>12 When this was brought up to me; A, I</p> <p>13 instructed my team to help the customer for whatever</p> <p>14 issue they have. Apart from that, I also instructed</p> <p>15 the leader to not -- you know, because the -- you know,</p> <p>16 when -- you know, what the development team is working</p> <p>17 on, I wanted to maintain cordial working relationship.</p> <p>18 So I told them not to make a big deal at the low</p> <p>19 levels. But we clearly understood that this was a</p> <p>20 major issue, which is why I escalated to my senior</p> <p>21 management. And it was brought up to the client.</p> <p>22 Q. And was it escalated to your senior management</p> <p>23 in mid-2009?</p> <p>24 A. I don't know the specific date, but --</p> <p>25 Q. Around that time period?</p>

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<p style="text-align: right;">137</p> <p>1 A. That's right. From this -- from Exhibit 45  2 and 46 it seems it was done on the same day.  3 Q. Do you remember around this time the issue of  4 possible decompiling at Ameriprise also come up?  5 A. I don't know if it was in a similar timeframe,  6 but I did know that there was an issue of decompiling  7 code at Ameriprise.  8 Q. Please look at what will be marked Exhibit 46.  9 THE REPORTER: 47.  10 MR. LANCASTER: Oh, 47. Thank you.  11 (Exhibit No. 47 marked.)  12 Q. (BY MR. LANCASTER) Exhibit 47 is just another  13 one of these e-mails where I'm just looking for any  14 help, if you can understand what's going on in this  15 e-mail. It's headed "CAR_HI Failed," stamped Trilogy  16 E 133993.  17 A. So from the e-mail what I find that they have  18 run some process, and that process has failed or has  19 come up with an error. And this gentleman, Himan Shu,  20 is asking if there was an error in how the input file  21 has been set up, which is what he's referring to, MT  22 TAG. Abhinash is a consultant -- or was a consultant  23 at Ameriprise at that point in time.  24 Q. And so are the files that are listed, are they  25 what is being examined in terms of trying to deal with</p>	<p style="text-align: right;">139</p> <p>1 e-mails is around reporting that.  2 Q. So, generally, is it the case that DCM  3 calculates compensation for different financial  4 products?  5 A. DCM has three major functions it does for  6 insurance and financial services company. The first  7 function is to be able to on-board an agent onto --  8 onto a system and maintain all the information, manage  9 all the information from the agent. The second  10 function is to be able to ensure that agent is  11 credentialed correctly, whether it be state or local --  12 state or federal credential needs. And then the third  13 portion is for -- for -- to compensate the agent having  14 various compensations plan in DCM to be able to do  15 that. Those are the three major functions of DCM.  16 Q. And, presumably, all three of those are core  17 functions?  18 A. Yes.  19 Q. And we talked about these various types of  20 components, loaders, extractors, exporters, importers,  21 validators, parsers. Are all of those tools used in  22 connection with each of those three core functions?  23 A. Yes. In some capacity or the other, yes.  24 Q. By the way, is there a difference between a  25 regular parser and an XML parser?</p>
<p style="text-align: right;">138</p> <p>1 the issue?  2 A. Which files are listed here? I'm sorry.  3 Q. Well, it appears that some files down at the  4 bottom are listed.  5 A. Actually, no, there are no files referred to  6 here. It's the -- the section that's listed where you  7 have, "Replace MTLOA Codes," that section is -- is an  8 exception or an error output that's listed.  9 Q. And so there's just -- strike that. Please  10 look at what we'll mark as Exhibit 48.  11 (Exhibit No. 48 marked.)  12 Q. (BY MR. LANCASTER) And similar kind of  13 question. Can you tell what's going on in this e-mail  14 exchange? And, obviously, the way we were able to  15 capture this, there's some gibberish in the middle of  16 it.  17 A. It's a long thread. Give me a few minutes.  18 Q. Sure.  19 A. From this e-mail thread -- I don't have any  20 context from Ameriprise, but from this e-mail thread it  21 seems like they're trying to run one of the loaders,  22 which is called the CAR loader, and they were facing  23 some difficulties with that because one of the files  24 that is supposed to be somewhere in the -- in the  25 installation doesn't exist. And the whole thread of</p>	<p style="text-align: right;">140</p> <p>1 A. Yes. Parser is generally, you know, going  2 through one input and setting it to another output.  3 XML parser specifically is parsing one XML and turning  4 it into whatever else the output needs to be.  5 Q. And I gather that the three core functions of  6 DCM are related to each other. For example, when  7 compensation is being calculated credentials need to be  8 verified, for example?  9 A. If that's the way a client wants to deploy it  10 and if that's their need, yes. These modules can be  11 deployed independently of -- of each other.  12 Q. And so -- but generally paying compensation  13 requires some kind of verifications to be performed?  14 A. At a conceptual level, yes.  15 Q. Do you happen to know how DCM verifies whether  16 an advisor is licensed to sell a particular financial  17 product and, therefore, should be compensated for it?  18 A. Sure. There are multiple ways to do it. I'll  19 give you a general approach. Once we identify the  20 credentials that an agent has, there are a set of rules  21 that have been set by the state that clients modify or  22 update. And those rules need to get enforced at  23 whatever point of time in the competition processing  24 that a customer chooses to do that. And DCM has a  25 module product called credentials rules engine that</p>

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<p style="text-align: right;">141</p> <p>1 enables validation whether a particular agent, agency</p> <p>2 is credentialed appropriately.</p> <p>3 Q. And that module plays a role in calculating</p> <p>4 compensation?</p> <p>5 A. That module plays a role in mentioning or</p> <p>6 confirming that a person or individual or organization</p> <p>7 is -- it can be -- it is credentialed correctly. The</p> <p>8 compensation module is the one that pays the</p> <p>9 compensation or calculates what happens.</p> <p>10 Q. And does the licensing validation work</p> <p>11 substantially the same way whether the product is a</p> <p>12 security or a mutual fund or insurance in DCM?</p> <p>13 A. The rules vary, and also interpretation</p> <p>14 from -- the state rules that are available vary</p> <p>15 depending on the line of business. The interpretation</p> <p>16 of the rule also varies from certain customers to</p> <p>17 customers.</p> <p>18 Q. Do you know what happens within the system if</p> <p>19 an unlicensed advisor tries to sell, for example, an</p> <p>20 insurance product?</p> <p>21 A. If the credential -- credential validation</p> <p>22 engine is not employed it wouldn't matter. In case --</p> <p>23 if it is employed and if the rule is set up to -- for</p> <p>24 insurance product -- and, again, insurance product is a</p> <p>25 very broad category. There are more lines of that.</p>	<p style="text-align: right;">143</p> <p>1 Q. Have you ever come across a JAR file called</p> <p>2 VTDXML? Does that mean anything to you?</p> <p>3 A. VTDXML? No.</p> <p>4 Q. So returning to the open source issues that we</p> <p>5 were talking about before lunch, have you ever</p> <p>6 encountered the concept of open source licenses that</p> <p>7 are called viral in the sense that when incorporated</p> <p>8 into other code they render the associated code subject</p> <p>9 to the license as well?</p> <p>10 MR. FOSTER: Objection, outside the</p> <p>11 scope.</p> <p>12 THE WITNESS: I've not heard of such a</p> <p>13 license.</p> <p>14 Q. (BY MR. LANCASTER) Have you ever heard of GNU</p> <p>15 GPL license, G-N-U?</p> <p>16 A. I've heard of it.</p> <p>17 Q. But you don't really know anything about the</p> <p>18 content of it?</p> <p>19 A. I don't know the details of it.</p> <p>20 Q. I'm either done or very close to done. Let me</p> <p>21 consult with my colleague here and then we'll come back</p> <p>22 and wrap up pretty promptly.</p> <p>23 MR. BARTON: Okay. Five minutes,</p> <p>24 ten minutes?</p> <p>25 MR. LANCASTER: Yeah, five minutes ought</p>
<p style="text-align: right;">142</p> <p>1 And if the rule enforces that it needs to be checked</p> <p>2 and -- it will check that.</p> <p>3 Q. And do you have a general understanding that</p> <p>4 the -- that validation process ensuring that an advisor</p> <p>5 is properly licensed is an important part of the</p> <p>6 Ameriprise installation of DCM?</p> <p>7 A. My understanding would be, yeah, it would be</p> <p>8 an important function.</p> <p>9 Q. Now, do you have any understanding of what</p> <p>10 would happen to DCM if the parsers were just removed</p> <p>11 from the product?</p> <p>12 A. There are multiple parsers and if it shipped</p> <p>13 with the product and they have configured the solution</p> <p>14 that uses the product and that parser, it could lead to</p> <p>15 an error.</p> <p>16 Q. And is there a reason why the product is</p> <p>17 shipped with multiple parsers?</p> <p>18 A. Yes. So one -- one usage could be because</p> <p>19 what's the source and the target. The other one could</p> <p>20 be performance requirements. Some parsers perform</p> <p>21 differently in different environments. A third one is</p> <p>22 in certain cases it is more from a technical</p> <p>23 perspective, integration of certain parsers work</p> <p>24 better. Those are the three broad -- broad categories</p> <p>25 I can think of.</p>	<p style="text-align: right;">144</p> <p>1 to be good.</p> <p>2 THE VIDEOGRAPHER: We're off the record</p> <p>3 1:50.</p> <p>4 (Recess from 1:50 p.m. to 2:01 p.m.)</p> <p>5 THE VIDEOGRAPHER: Stand by. We're back</p> <p>6 on the record, 2:01.</p> <p>7 MR. LANCASTER: I have no further</p> <p>8 questions preparatory to the temporary injunction</p> <p>9 hearing. Before we talk about the documents --</p> <p>10 MR. FOSTER: We'll reserve our questions.</p> <p>11 MR. LANCASTER: So we discussed off the</p> <p>12 record what would happen to the originals. And, as I</p> <p>13 understand it, the court reporter will take the</p> <p>14 originals and provide copies to each party that</p> <p>15 requests them. But after that use is made of them,</p> <p>16 they will be returned to the party taking the</p> <p>17 deposition, who will be the custodian for them through</p> <p>18 the life of the case. Does that make sense?</p> <p>19 MR. FOSTER: It makes sense, and that's</p> <p>20 agreeable to us.</p> <p>21 MR. LANCASTER: I have nothing further.</p> <p>22 THE VIDEOGRAPHER: We're off the record</p> <p>23 2:02.</p> <p>24 (Proceedings concluded at 2:02 p.m.)</p> <p>25</p>

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145	<p>1 CHANGES AND SIGNATURE</p> <p>2 WITNESS NAME: RANGARAJAN VENKATESAN</p> <p>3 DATE OF DEPOSITION: JUNE 14, 2013</p> <p>4 PAGE LINE CHANGE REASON</p> <p>5 _____</p> <p>6 _____</p> <p>7 _____</p> <p>8 _____</p> <p>9 _____</p> <p>10 _____</p> <p>11 _____</p> <p>12 _____</p> <p>13 _____</p> <p>14 _____</p> <p>15 _____</p> <p>16 _____</p> <p>17 _____</p> <p>18 _____</p> <p>19 _____</p> <p>20 _____</p> <p>21 _____</p> <p>22 _____</p> <p>23 _____</p> <p>24 _____</p> <p>25 _____</p>	147	<p>1 NO. D-1-GN-12-003588</p> <p>2 VERSATA SOFTWARE, INC., ) IN THE DISTRICT COURT</p> <p>3 (/s/ TRILogy SOFTWARE, )</p> <p>4 INC., and VERSATA )</p> <p>5 DEVELOPMENT GROUP, INC., )</p> <p>6 (/s/ TRILogy DEVELOPMENT )</p> <p>7 GROUP, INC., )</p> <p>8 Plaintiffs, )</p> <p>9 )</p> <p>10 VS. ) TRAVIS COUNTY, TEXAS</p> <p>11 )</p> <p>12 AMERIPRISE FINANCIAL, )</p> <p>13 INC., AMERIPRISE )</p> <p>14 FINANCIAL SERVICES, INC., )</p> <p>15 AMERICAN ENTERPRISE )</p> <p>16 INVESTMENT SERVICES, )</p> <p>17 INC., )</p> <p>18 Defendants. ) 53RD JUDICIAL DISTRICT</p> <p>19</p> <p>20 REPORTER'S CERTIFICATION</p> <p>21 VIDEOTAPED DEPOSITION OF THE CORPORATE REPRESENTATIVE</p> <p>22 OF VERSATA SOFTWARE, INC.</p> <p>23 (RANGARAJAN VENKATESAN)</p> <p>24 JUNE 14, 2013</p> <p>25</p> <p>1 I, KIM SEIBERT, Certified Shorthand Reporter in and</p> <p>2 for the State of Texas, hereby certify to the</p> <p>3 following:</p> <p>4 That the witness, RANGARAJAN VENKATESAN, was duly</p> <p>5 sworn by the officer and that the transcript of the</p> <p>6 oral deposition is a true record of the testimony given</p> <p>7 by the witness;</p> <p>8 That the deposition transcript was submitted on</p> <p>9 _____, 2013, to the witness or to the</p> <p>10 attorney for the witness for examination, signature and</p> <p>11 return to me by _____, 2013;</p>
146	<p>1 _____</p> <p>2 _____</p> <p>3 _____</p> <p>4 I, RANGARAJAN VENKATESAN, have read the</p> <p>5 foregoing deposition and hereby affix my signature that</p> <p>6 same is true and correct, except as noted above.</p> <p>7 _____</p> <p>8 RANGARAJAN VENKATESAN</p> <p>9 _____</p> <p>10 THE STATE OF _____)</p> <p>11 COUNTY OF _____)</p> <p>12 Before me, _____, on this day</p> <p>13 personally appeared RANGARAJAN VENKATESAN, known to me</p> <p>14 (or proved to me under oath or through</p> <p>15 _____) (description of identity</p> <p>16 card or other document) to be the person whose name is</p> <p>17 subscribed to the foregoing instrument and acknowledged</p> <p>18 to me that they executed the same for the purposes and</p> <p>19 consideration therein expressed.</p> <p>20 Given under my hand and seal of office this</p> <p>21 _____ day of _____,</p> <p>22 _____</p> <p>23 _____</p> <p>24 NOTARY PUBLIC IN AND FOR</p> <p>25 THE STATE OF _____</p> <p>COMMISSION EXPIRES: _____</p>	148	<p>1 That the amount of time used by each party at the</p> <p>2 deposition is as follows:</p> <p>3 Mr. Benjamin Foster -</p> <p>4 Mr. Peter M. Lancaster - 3 hrs. 42 min.</p> <p>5</p> <p>6 That pursuant to information given to the</p> <p>7 deposition officer at the time said testimony was</p> <p>8 taken, the following includes counsel for all parties</p> <p>9 of record:</p> <p>10 Messrs. Ben Foster and Travis Barton, Attorneys for</p> <p>11 Plaintiffs;</p> <p>12 Messrs. Peter M. Lancaster and Christopher Silco,</p> <p>13 Attorney for Defendants.</p> <p>14 I further certify that I am neither counsel for,</p> <p>15 related to, nor employed by any of the parties or</p> <p>16 attorneys in the action in which this proceeding was</p> <p>17 taken, and further that I am not financially or</p> <p>18 otherwise interested in the outcome of the action.</p> <p>19 Further certification requirements pursuant to Rule</p> <p>20 203 of TRCP will be certified to after they have</p> <p>21 occurred.</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>

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<p>1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25</p>	<p style="text-align: right;">149</p> <p>Certified to by me this _____ of _____ 2013.</p>  <p>Kim Seibert, Texas CSR 4589 Expiration Date 12-31-2014 U.S. Legal Support, Inc. 701 Brazos, Suite 380 Austin, Texas 78701 Firm Registration 344 Expiration Date 12-31-2014</p> <p>Job No. 4-AUSTIN-144862 KS</p>	<p style="text-align: right;">150</p> <p>FURTHER CERTIFICATION UNDER RULE 203 TRCP</p> <p>The original deposition was/was not returned to the deposition officer on _____; If returned, the attached Changes and Signature page contains any changes and the reasons therefor; If returned, the original deposition was delivered to Mr. Peter M. Lancaster, Custodial Attorney; That \$ _____ is the deposition officer's charges to the Defendants for preparing the original deposition transcript and any copies of exhibits; That the deposition was delivered in accordance with Rule 203.3, and that a copy of this certificate was served on all parties shown herein on and filed with the Clerk.</p> <p>Certified to by me this _____ day of _____, _____, 2013.</p> <p>Kim Seibert, Texas CSR 4589 Expiration Date 12-31-2014 U.S. Legal Support, Inc. 701 Brazos, Suite 380 Austin, Texas 78701 Firm Registration 344 Expiration Date 12-31-2014</p> <p>Job No. 4-AUSTIN-144862 KS</p>
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30 10:24 13:3 97:18 103:21	4 4 16:11 29:22,24 38:1 104:1 114:18 40 5:22 103:22 130:5,7,7 41 5:24 131:8,9 42 6:1 131:21,22 148:3 43 6:2 132:13,14 44 6:3 132:25 133:1 45 6:4 134:4,5,6 137:1 4589 149:6 150:19 46 5:12 6:5 135:20,21,22 137:2,8 47 6:6 137:9,10 137:11,12 48 6:7 103:23,24 138:10,11	7 7 5:5 29:22 30:5 31:13 34:16 35:4 43:23,24 44:1,10 114:18 701 4:3 149:8 150:21 713 3:11 77010 3:10 78701 3:5,20 4:3 149:8 150:21 78746 7:12	
31 5:11 8:16,17 8:18 15:12		8 8 5:11 122:17 123:11,15,23 80 15:9,10	
32 5:12 46:16,17		9	



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Received: by ywh34 with SMTP id 34so17048102ywh.31for <frank.kopas@versata.com>; Tue, 12 Jan 2010 22:05:19 -0800 (PST)  
Received: by 10.101.201.10 with SMTP id d10mr4774692anq.193.1263362719683; Tue, 12 Jan 2010 22:05:19 -0800 (PST)  
Return-Path: <chris.strahorn@versata.com>  
Received: from 710.71.0.111? ([65.242.219.10]) by mx.google.com with ESMTPS id 21sm3297387lwn.10.2010.01.12.22.05.18(version=SSLv3 cipher=RC4-MD5); Tue, 12 Jan 2010 22:05:19 -0800 (PST)  
In-Reply-To: <126979131001122122r1fe4c54bja4ad0f69faf66611@mail.gmail.com>  
To: Frank Kopas <frank.kopas@versata.com>  
Subject: Re: open source technologies in DCM  
MIME-Version: 1.0  
X-Mailer: Lotus Notes Release 7.0.3 September 26, 2007  
Message-ID: <OF45C9DC88.1285CBF9-ON862576AA.00215192-862576AA.00215619@versata.com>  
From: chris.strahorn@versata.com  
Received(Date): Wed, 13 Jan 2010 00:04:07 -0600  
X-MIMETrack: Serialize by Notes Client on Chris Strahorn/Trilogy(Release 7.0.3|September26, 2007) at 01/13/2010 12:05:35 AM,Serialize complete at 01/13/2010 12:05:35 AM  
Content-Type: text/html; charset="US-ASCII"

Hey Frank. That's the list.

thanks,

Chris

Frank Kopas  
<frank.kopas@versata.com>

To: chris.strahorn@versata.com

cc

01/12/2010 11:22 PM

Subject: Re: open source technologies in DCM

ok, thanks. to confirm, this is the list i should give them:?



Trilogy-E-000021049-1

Postgres  
JBoss/Tomcat  
Linux  
jPivot  
Mondrian  
Eclipse BIRT  
PDFBox-0.7.2.jar  
activation.jar  
antlr.jar  
avalon-framework-cvs-20020806.jar  
axis.jar  
batik.jar  
collections.jar  
commons-beanutils-1.6.jar  
commons-collections-3.1.jar  
commons-dbcp-1.2.1.jar  
commons-digester-1.5.jar  
commons-discovery-0.2.jar  
commons-fileupload-1.2.jar  
commons-io-1.0.jar  
commons-logging-1.0.4.jar  
commons-math-1.0.jar  
commons-net-1.3.0.jar  
commons-pool-1.2.jar  
commons-validator.jar  
commons-vfs.jar  
dom.jar  
dom4j.jar  
eigenbase-properties.jar  
eigenbase-resgen.jar  
eigenbase-xom.jar  
emma.jar  
emma\_ant.jar  
fop.jar  
jaas.jar  
jai\_codec.jar  
jai\_core.jar  
jakarta-regexp-1.2.jar  
javacup.jar  
javamail  
jax-qname.jar  
jaxb-api.jar  
jaxb-impl.jar  
jaxb-libs.jar  
jaxb-xjc.jar  
jaxb1-impl.jar



jaxen-full.jar  
jasp-api.jar  
jaxrpc.jar  
jaxws-api.jar  
jaxws-rt.jar  
jaxws-tools.jar  
jcert.jar  
jcommon-1.0.0.jar  
jdom.jar  
jfreechart-1.0.0.jar  
jgl3.1.0.jar  
jmi.jar  
jndi.jar  
jnet.jar  
jsf-api.jar  
jsr173\_api.jar  
jsr181-api.jar  
jsr250-api.jar  
jsse.jar  
jstl.jar  
jta-spec1\_0\_1.jar  
log4j.jar  
lotusxsl.jar  
mail.jar  
mailapi.jar  
mjlib.jar  
mof.jar  
namespace.jar  
oro.zip  
oromatcher  
providerutil.jar  
relaxngDatatype.jar  
resolver.jar  
saaj-api.jar  
saaj-impl.jar  
saaj-ri.jar  
sax.jar  
saxpath.jar  
servlet.jar  
sjsxp.jar  
smtp.jar  
standard.jar  
struts.jar  
vtd-xml.jar  
wsdl4j-1.5.1.jar  
xalan.jar

xerces.jar  
xercesimpl.jar  
xml-apis.jar  
xml4j.jar  
xmlParserAPIs.jar  
xmlsec.jar  
xmlunit1.0.jar  
xsdlib.jar

On Tue, Jan 12, 2010 at 9:07 PM, <[chris.strahorn@versata.com](mailto:chris.strahorn@versata.com)> wrote:

Hey Frank. I've posted the list out on the Wiki along with a bunch of other materials that are typically needed during sales cycles. It's available from

<https://sites.google.com/a/versata.com/dcm-core/dcm-sales>

thanks

Chris

Frank Kopas  
<[frank.kopas@versata.com](mailto:frank.kopas@versata.com)>

To: Chris Strahorn <[chris.strahorn@versata.com](mailto:chris.strahorn@versata.com)>

cc: Leela Kaza <[leela.kaza@versata.com](mailto:leela.kaza@versata.com)>

01/12/2010 02:20 PM

Subject: open source technologies in DCM

Chris, we need to provide a list of open source components present in DCM to Waddell & Reed as part of the negotiations. Can you send that to me when you have time.

Frank

NO. D-1-GN-12-003588

VERSATA SOFTWARE, INC., f/k/a  
TRILOGY SOFTWARE, INC., and VERSATA  
DEVELOPMENT GROUP, INC., f/k/a  
TRILOGY DEVELOPMENT GROUP, INC.,  
*Plaintiffs,*

v.

AMERIPRISE FINANCIAL, INC.,  
AMERIPRISE FINANCIAL SERVICES, INC.,  
AMERICAN ENTERPRISE INVESTMENT  
SERVICES, INC.,  
*Defendants.*

IN THE DISTRICT COURT

TRAVIS COUNTY, TEXAS

53<sup>rd</sup> JUDICIAL DISTRICT

**DEFENDANTS' NOTICE OF DEPOSITION TO PLAINTIFFS**  
**VERSATA SOFTWARE, INC. AND VERSATA DEVELOPMENT GROUP, INC.**

To: Versata Software, Inc. f/k/a Trilogy Software, Inc. and Versata Development Group, Inc. f/k/a Trilogy Development Group, Inc., by and through their attorneys of record, Travis Barton, McGinnis, Lochridge & Kilgore, LLP, 600 Congress Ave., Suite 2100, Austin, TX 78701 and Amir Alavi, Steven J. Mitby & Ben Foster, Ahmad, Zavitsanos, Anaipakos, Alavi & Mensing, PC, 1221 McKinney Street, Suite 3460, Houston, TX 77010.

PLEASE TAKE NOTICE that, pursuant to TEX. R. CIV. P. 199, Defendants/Counter-Plaintiffs Ameriprise Financial, Inc., Ameriprise Financial Services, Inc., and American Enterprise Investment Services, Inc. (collectively, "Ameriprise") through their counsel, will take the deposition upon oral examination of the corporate representative(s) of Plaintiffs Versata Software, Inc. f/k/a Trilogy Software, Inc. and Versata Development Group, Inc. f/k/a Trilogy Development Group, Inc., (collectively, "Versata") on June 14, 2013 at 9:00 a.m., at the offices of McGinnis, Lochridge & Kilgore, LLP, 600 Congress Ave., Suite 2100, Austin, TX 78701, on the particular matters described in Exhibit A hereto and incorporated herein ("Designated Matters").

Pursuant to Rule 199.2(b)(1), Versata is directed, with respect to each of the Designated Matters, to designate reasonably in advance of the foregoing date, but not later than three (3)

business days prior to the foregoing date, the person or persons to testify on its behalf to matters that are known or reasonably available to Versata.

The deposition will continue from day to day until completed. You are invited to attend and cross-examine. The deposition will be videotaped.

This deposition will be taken for the purposes of discovery, for use at trial of this cause, and for all other purposes authorized by the Texas Rules of Civil Procedure.

Respectfully submitted,

SCOTT, DOUGLASS & MCCONNICO, LLP

By: 

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Christopher D. Sileo  
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**ATTORNEYS FOR DEFENDANTS/COUNTER  
- PLAINTIFFS**

**CERTIFICATE OF SERVICE**

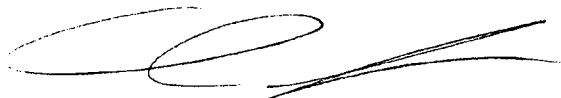
I hereby certify that a true and correct copy of this Notice of Deposition was served on the following counsel of record by the methods stated below on the 21<sup>st</sup> day of May 2013:

**Via Facsimile: 512-495-6093**

Travis Barton  
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Houston, TX 77010  
*Attorneys for Plaintiffs*

  
\_\_\_\_\_  
Christopher D. Sileo

**DEFINITIONS**

This notice is to be responded to with reference to the following definitions:

1. "Agreement" means the October 4, 1999 Master License Agreement between Ameriprise and Versata.
2. "Ameriprise" means Defendant Ameriprise Financial, Inc. and its predecessors and its current and former affiliates and subsidiaries.
3. "DCM" means the software product known as Distribution Channel Management and licensed at any time to Ameriprise.
4. "License" means any written, oral or other agreement or arrangement, formal or informal, between Versata Software, Inc. and another entity or individual.
5. "Versata" means Plaintiff Versata Software, Inc., and any current and former parent, subsidiary or affiliate of Versata Software, Inc., including, without limitation, Trilogy Software, Inc., Versata Development Group, Inc., and Trilogy Development Group, Inc.

**EXHIBIT "A"**

1. A description of all code and documentation that Versata has escrowed pursuant to the Agreement for the benefit of Ameriprise.
2. All licenses covering, or relating to, DCM code or components of DCM.
3. The genesis of the code included in DCM.
4. Versata's DCM development, maintenance, and support staffing models and processes, including, without limitation, any efforts to maintain quality and confidentiality of code in DCM.
5. The structure, features, and functions of DCM, including the relationships of class files to other class files and the relationship of stock DCM code to custom code.
6. Key class files, including those class files essential to operate DCM.